

# WATER USER AGENCIES AND ORGANIZATIONS

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## CENTRAL ARIZONA PROJECT

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September 8, 2000

Regional Director  
Lower Colorado Region  
c/o Jayne Harkins, BC00-4600  
Bureau of Reclamation  
PO Box 61470  
Boulder City, NV 89006-1470

Dear Ms. Harkins:

The Central Arizona Water Conservation District (CAWCD) is offering written comments on the Draft Environmental Impact Statement regarding the proposed Colorado River Interim Surplus Criteria. CAWCD is the local governmental entity with the responsibility for repayment to the USBR for the reimbursable construction costs of the Central Arizona Project (CAP) and for operation and maintenance of the CAP.

1. As the CAP has junior water rights on the Lower Colorado River, we are the water user entity most severely impacted by shortages. As the CAP and Arizona are not yet fully utilizing our full apportionment for direct use, CAP is the least likely to benefit from more frequent surplus supplies. Nonetheless, CAWCD will generally support interim surplus criteria that creates more frequent surplus supplies, principally for the benefit of California, as part of an overall plan for California to develop the capability of living within its 4.4 MAF base allocation of Lower Colorado River water. However, this interim surplus criteria must be hydrologically reasonable and contain certain provisions to receive CAWCD's support. The alternative that best meets this concern is the 7-Basin States' Proposal.

2. The Draft Environmental Impact Statement (DEIS) considers a broad range of alternatives that readily encompasses the criteria and impacts associated with the 7-Basin States' Proposal. The addition of the 7-Basin States' Proposal through the separate Federal Register notice should allow ample opportunity for consideration as the Secretary develops the final recommendation. During the scoping process, CAWCD and others stated that we did not feel the EIS process was necessary or helpful, reasoning that the Secretary could develop surplus criteria or guidelines within the parameter of the Long Range Operating Criteria and as a part of the Annual Operating Plan process. The EIS process is, however, well underway and should lead to a timely decision in this matter.

By: [Signature]  
[Name]

1: The preferred alternative in this FEIS is derived from the Seven States proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with Reclamation policy and operational procedures.

2: The Department notes that CAWCD did not "feel the EIS process was necessary or helpful." The Secretary has determined that development and implementation of interim surplus criteria is a discretionary federal action that may have significant impacts on the environment, thus is subject to NEPA process through the preparation of an EIS. The EIS analyzes the potential impacts to resources and forms the technical basis for the Secretary to make an informed decision in the Record of Decision of which alternative best meets the purpose and need for the proposed action and what impacts are expected.

Ms. Jayne Harkins  
September 8, 2000  
Page 2

3 Despite man's efforts, we have not been able to control the Colorado River. It is a river of wide variation in river flows, from flood to dry, even with all of our storage reservoirs. The studies portrayed in the DEIS demonstrate that over the next 50 years the reservoirs and river flows will experience the same range of highs and lows, no matter what alternative criteria are used over the next 15 years. Only the frequency and duration of the time spent in various conditions will change. There appears to be no conclusively measurable impact upon habitat. We have been able to harness the river and reap some of its benefits: water supply, flood control, hydro power, recreation and managed habitat. All of the model studies that were performed can help us to predict the impact of alternative operating strategies on the primary benefits of flood control, water supply, and hydro power. Interim surplus criteria most directly affects water supply. As previously noted, the CAP is the project most affected by changes in water supply.

4 Absent a need to address and assist California water issues, CAP would prefer to stay with the 70R Baseline criteria. Within the range of alternatives considered, the 7-Basin States' Proposal has the most reasonable hydrologic criteria for a tiered plan to quantify and reduce the surplus supply as reservoir storage is reduced. It is the only alternative that requires California to accept the risk of increased shortages by agreeing to accept the first 1.0 MAF of shortage if the interim criteria do, in fact, cause more frequent or more severe shortages.

5 There are a few areas in the 7-Basin States' Proposal that need improvement:  
1) There needs to be more detail on how California will bear the additional shortage risk and how those conditions will be enforced.

6 2) There is some inequity in that MWD is allowed to divert and bank surplus Colorado River water for "off-stream banking" as part of its "Direct Delivery Domestic Use". Yet Arizona is allowed to do "off-stream banking" only at the two highest levels of surplus, i.e., quantified surplus at 70R and flood control surplus. In the context of an overall consensus agreement, CAWCD may be willing to accept this inequity. Our hope is that the river system will often be in a 70R mode over the next 15 years.

7 3) The shortage criteria used in all of the DEIS studies, including the 7-Basin States' Proposal, are based on specific Lake Mead elevation levels. One is 1033 msl, as the minimum power pool, another is 1000 msl, the elevation of the lower Southern Nevada Water Authority (SNWA) intake, the 7-Basin States' Proposal is 1050 msl, the upper SNWA intake. All of these specific elevations are economic criteria. The shortage trigger should be a water supply/current demand driven analysis similar to the 602(a) criteria for Lake Powell storage. It should be the current level of storage needed to support deliveries to the Lower Basin states without causing the CAP supply to fall below 1.0 MAF (or Arizona below 2.3 MAF) during the most critical period of record.

8 The primary reason to consider interim surplus operating criteria is to allow and require California to take the actions necessary to reduce its use of Colorado River water to 4.4 MAF. It

3 Comment noted

4 The 70R strategy was used as the baseline in the FEIS. The Basin States alternative in this FEIS is derived from the Seven States proposal.

5 The Secretary intends to appropriately report the accumulated volume of water delivered to MWD under surplus conditions. The Secretary intends to honor forbearance arrangements made by various parties for reparations of future shortage conditions.

6 Comment noted

7 There are no established shortage criteria for the operation of Lake Mead. Further, the development and evaluation of interim surplus criteria under this FEIS is not intended to establish shortage criteria for the operation of Lake Mead. However, it was necessary to include some shortage criteria in the model simulations to address concerns related to low Lake Mead water levels. The selected Lake Mead level protection assumptions were applied to the model to facilitate the evaluation of the baseline conditions and surplus alternatives.

8 As discussed in the purpose and need, the purpose is to provide "a greater degree of predictability" of when surplus water is, or is not, available. Reclamation agrees that some of the interim surplus criteria alternatives would facilitate California's reduction of its water use to 4.4 maf. However, this is not the primary purpose. As noted in Section 2.3, the interim surplus criteria would terminate at the end of the 15-year period. In the absence of subsequently specified criteria, surplus determinations would be made as is currently done, as part of the AOP process. Section 1.4.1 discusses the termination of the interim surplus criteria prior to the end of 15 years.

## COMMENT LETTER

## RESPONSES

Ms. Jayne Harkins  
September 8, 2000  
Page 3

- cont'd
- is particularly disturbing to note in paragraph 5.4.4 of the DEIS that the Secretary may choose to terminate the interim criteria and revert to the current method if California fails to meet its goals. We believe the commitment to terminate the interim criteria must be an enforceable agreement among the states and the Department of the Interior, not a purely discretionary action on the part of the Secretary.
9. As the single largest contract holder for Arizona's share of Hoover B power, we are interested in the impacts of interim criteria on the long term trends of Hoover power production. The model studies indicate, as expected, that in all scenarios increasing demands for water supply will lower reservoir levels and the resulting loss of power head will reduce generation. In analyzing the various alternatives, the DEIS compared the changes in hydropower production on a regional basis, noting that the hydropower provides only 3.6% of the region's resources. It would be more helpful if the impacts were noted on the specific group of federal hydropower contractors. This would be more consistent with the analysis of the economic impacts on pumping costs for the SNWA or the economic impact analysis on recreation facilities at Lake Mead and Lake Powell.
10. The DEIS is quite detailed. We question some of the modeling assumptions used, particularly the surplus demand schedule, but will not offer any specific comments. We believe adequate comments on modeling concerns were raised at the modeling workshop conducted by Reclamation.
11. We disagree with the analysis of the impact of shortages. On page 3.4.5, the DEIS states that shortages will impact agricultural water use and recharge initially, then M&I use later. We believe shortages will impact Indian use if current settlement discussions result in non-Indian agriculture being reallocated for Indian use. In addition, some Indian agricultural water is shunted before M&I. While there is more detail included in Tables 3.14.3 and 3.14.4, there is some confusion because both Tables have the same title. We believe Table 3.14.4 should be titled "With GRIC." In any case, it doesn't appear the assigned shortages are consistent with our interpretation of current priorities or with the priority scheme developed in the GRIC settlement discussions.
12. CAWCD believes that the DEIS improperly considers the impacts in Mexico from Reclamation's actions in the United States. In general, there is a strong presumption against the extraterritorial application of U.S. laws. The courts have held that NEPA, in particular, should not be applied outside the United States, in part because of potential conflicts with foreign policy and treaty matters. That is especially true here, given the 1944 treaty with Mexico.
13. The CAWCD supports the comments offered by the Arizona Department of Water Resources and intends these comments to complement and supplement their comments.

9. Comment noted. Reclamation believes that the level of analysis for energy resources presented in the EIS appropriately identifies the potential effects of interim surplus criteria.

10. The water depletion schedules used in DEIS for the modeling of the baseline conditions and surplus alternatives were revised and updated by the Basin States for the FEIS. The individual states developed these revised schedules in coordination with Reclamation, the various Colorado River water contractors, Indian Tribes and local agencies. A summary of the updated Upper and Lower Division depletion schedules are presented in Attachments I and K of the FEIS, respectively.

11. The modeled Colorado River water deliveries under the baseline conditions and surplus alternatives assumed that all Arizona shortages would be absorbed by the Central Arizona Project. Reclamation acknowledges that under the current priority framework, there would be some sharing of Arizona shortage between the Central Arizona Project and other Priority 4 users. However, the bases or formula for the sharing of Arizona shortages is the subject of current negotiations and as such, could not be adequately modeled for the FEIS. The water supply conditions modeled for the FEIS were used to evaluate the relative differences in water deliveries to each state under baseline conditions and the surplus alternatives. The normal, surplus and shortage condition water depletion schedules modeled in the FEIS are consistent with the depletion schedules prepared by the Basin States for this purpose.

12. The applicable guidance appears to be contrary to your comment. EO 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957, 1979 WL 25866 (Pres.) requires that federal agencies "consider the significant effects of their actions on the environment outside the U.S., its territories and possessions." Recent CEQ guidance for transboundary impacts, dated July 1, 1997, appears consistent with the approach in the Executive Order.

13. Comment noted.

In summary, CAWCD can support the 7-Basin States' Proposal with 1) a stronger enforcement mechanism in the event that California does not comply with its 4.4 MAF plan; 2) enforceable commitments for California's reparation for increased water supply shortages; and 3) a commitment to develop more specific supply/demand shortage criteria similar to the 602(a) criteria used for Lake Powell in the future.

Sincerely,

Henry R. Dozier

fr

David S. "Sid" Wilson Jr.  
General Manager

cc: Rita Pearson ADWR



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FOUNTAIN VALLEY 92708 • COACHELLA CALIFORNIA 92235 • 761 FOUNTAIN VALLEY 92708

[illegible]

September 8, 2000

File: 0025139  
SEP 11 2000 104115

Jayne Harkins, BC00-4600  
U S Department of the Interior  
Bureau of Reclamation  
Lower Colorado Regional Office  
Post Office Box 61427  
Boulder City, Nevada 89006


Dear Ms Harkins:

This letter is in response to your transmittal of the draft Environmental Impact Study for the Colorado River Interim Surplus Criteria. The district values the opportunity to comment on this document.

Our comments are detailed in the enclosed Attachment A

If you have any questions please call Robert Robinson, resource engineer, extension 424

Yours very truly,

  
Tom Levy  
General Manager-Chief Engineer

Enclosure/1/as

2. AIC<sub>2</sub> language use: 2000 hours

TRUE CONSERVATION  
USE WATER WISELY

## COMMENT LETTER

Interim Surplus Guidelines

Coachella Valley  
Water District

## ATTACHMENT A

1 Page 1-21, Section 1.4.1 California Colorado River Water Use Plan  
(4.4 Plan)

The Bureau of Reclamation implies that Interim Surplus guidelines will be in place prior to implementation of the 4.4 Plan and its associated settlement agreement quantifying the third, fourth, fifth and sixth priority California Colorado River water contractors

1

These comments are submitted with the understanding that the issues outlined in Quantification Settlement Agreement will be resolved on the time table set by the Secretary of the Interior. The district reserves the right to modify and add to these comments in the event progress does not proceed according to the agreed upon time table; it being understood that lack of progress on the Quantification Settlement Agreement would materially change the scope and impact of the proposed Interim Surplus Guidelines

1: Comment noted

## 2 Page 2-5, Section 2.3 Last Paragraph

2

One of the difficulties in administering Colorado River water rights among the California Colorado River contractors is the unquantified nature of the priority system contained within federal contract. The priority system implicitly redefines Colorado River water, not as a private commodity subject to private sale under a free enterprise system, but as a managed commodity restricted to a specific service area and subject to reasonable and beneficial use. The Description of Alternatives does not describe the duty of the Secretary to actively enforce his contracts by ascertaining the reasonable and beneficial use of water by each contracting party.

2: The Secretary's responsibilities in administering the river system and water delivery contracts are addressed in Chapter 1. For further information regarding reasonable and beneficial use and Reclamation's authority, see response to 56-29.

Page-1

## COMMENT LETTER

Interim Surplus Guidelines

Coachella Valley  
Water District3 Page 3 4-6, 3 4 3 3 State of California, *Law of the River*

- 3 One of the difficulties in federal oversight of California's use of Colorado River water has been a priority system which allows water to cascade from one priority to another. In order for such a priority system to work, the locations where Colorado River water can be used in California must be limited to a highly detailed, specific service area. Without a specific area limitation, the priority system outlined by federal contract would not work. A description of this difficulty needs to be included between the sentence describing the *Law Of The River* and the 1964 Supreme Court Decree.

## 2 3 3 and 2 3 4

- 4 The establishment of Tiers 1 through 3 for both the Six States Surplus Alternatives and the California Surplus Alternatives are a default rearrangement (Attachment D page 7, Attachment E page A-5) of the California priority system. This rearrangement does not take place until execution of the Quantification Settlement Agreement which is a key element of the California 4 4 plan. The CVWD agrees with the combination approach taken including both water transfers and multi-tiered surpluses.

- 5 More importantly, wording should be included stating that unilateral implementation of the Surplus Guidelines by the Bureau of Reclamation without the combined implementation of the Quantification Settlement Agreement and 4 4 Plan would favor one party at the expense of another party, i.e., a higher priority agricultural water contractor will be able to divert additional Colorado River water while transferring water outside of the existing priority system.

## 4 Page 3 4-19, 3 4 4 2 State of California

- 6 The runs incorporating multi tiers and water transfers change the priorities among the California Colorado River water contractors (Attachment G schedules).

Wording should be inserted that the computer model contains the assumption that guideline implementation has a "transition" period allowing for the orderly movement from the existing priority system to the interim system.

3: We note your comment and have added a third paragraph under Section 3 4 3 3 to add more details on the California priority system.

4: Comment noted.

5: Comment noted. No transfers of California Colorado River entitlements may occur without the approval of the Secretary of the Interior. Mere determination of the operational criteria for surplus condition pursuant to the LROC favor no particular party in any state. Surplus waters are distributed in accordance with Article II(B)2 of the Decree unless other voluntary arrangements among the parties are in place.

6: We note your comment and have revised the first paragraph under Section 3 4 4 2 to address the transition period.



## COMMENT LETTER

Interim Surplus Guidelines

Coachella Valley  
Water District

## 5 Page 3 16-1, Section 3 16-2 Methodology

7

The waters of the Colorado, once delivered, are the exclusive property of Mexico. The Bureau of Reclamation in extending the scope of the Environmental Impact Statement beyond the United States implies an extension of federal authority into a foreign country whose courts and laws do not recognize that authority. This document, if it is to include discussions on impacts in Mexico, must be reviewed and approved by the U. S. State Department prior to publication. If the review and approval of the State Department is not secured, Section 3 16 Transboundary Impacts must be deleted.

## 6 Page 4-1 Cumulative Impacts, second paragraph regarding intrastate water transfers

8

Because the California priority system is a relative system of water allocation, any project or agreement between two parties with differing priorities will have impacts on other intermediate priorities. Therefore a guiding principle in the Quantification Settlement negotiations has been that implementation of the Quantification Settlement Agreement will occur all at once i.e. all elements combined as one package and no single element being implemented outside the Quantification Settlement Agreement. The cumulative impacts section should contain wording indicating that the Interim Surplus Guidelines are both a condition precedent of the Quantification Settlement Agreement, and an integral part of the California Colorado River Water Use Plan.

7: Nothing in the DEIS implies an extension of U.S. federal authority into Mexico nor could it. The US Section of the International Boundary and Water Commission (USIBWC) is a cooperator in this EIS process. As such, the USIBWC had an opportunity to review and comment on the DEIS and this FEIS prior to public availability. Accordingly, we decline the request to delete Section 3 16.

8: The purpose and need of the proposed action is to provide more specific surplus criteria and increased predictability with regard to surplus determinations. Reclamation is preparing a separate NEPA document to consider the Secretarial Implementation Agreements associated with the California Colorado River Water Use Plan.

Section 4 2 has been modified and Reclamation believes that it has appropriately addressed potential cumulative effects of the proposed action. Reclamation does not believe the adoption of surplus criteria is a component of the "California Plan," but does believe that surplus criteria should neither frustrate nor hinder California's efforts to reduce its Colorado River water use.


**CREDA**  
 Colorado River Energy Distributors Association

 ARIZONA  
 Arizona Municipal Power Users Association

September 7, 2000

Arizona Power Authority

Arizona Power Pooling Association

Irrigation and Electrical Districts  
AssociationNavajo Tribal Utility Authority  
(also New Mexico, Utah)

Salt River Project

COLORADO  
Colorado Springs Utilities

Intermountain Rural Electric Association

Platte River Power Authority

In-State Generation & Transmission  
Cooperative  
(also Nebraska, Wyoming, New Mexico)Yampa Valley Electric  
Association, Inc.NEVADA  
Colorado River Commission  
of Nevada

Silver State Power Association

NEW MEXICO  
Farmington Electric Utility SystemTo State Generation & Transmission  
Cooperative

City of Truth or Consequences

UTAH

City of Provo

Strawberry Electric Service District

Utah Associated Municipal Power Systems

Utah Municipal Power Agency

WYOMING  
Wyoming Municipal Power Agency

Leslie James

Executive Director

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Ms. Jayne Harkins

Bureau of Reclamation

Attn: BCOD -4600

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Boulder City, NV 89006-1470

(fax: 702-293-8042)

RE: COMMENTS ON DRAFT EIS ON COLORADO RIVER INTERIM SURPLUS  
CRITERIA

Dear Ms. Harkins:

The Colorado River Energy Distributors Association (CREDA) is an association of over 133 consumer-owned electric systems that purchase and distribute more than eighty-five percent of the energy produced by the Colorado River Storage Project (CRSP). In addition, CREDA members repay nearly ninety-five percent of the federal investment in the CRSP. CREDA member systems serve nearly three million consumers in six Western states. CREDA represents the majority of CRSP firm power contractors, who have a direct and specific interest in issues, which could affect Glen Canyon Dam operations and output.

CREDA has reviewed the DEIS on the Interim Surplus Criteria, and finds that under any of the alternatives, including the base case, there will be significant impacts to the firm power contractors of the federal power projects on the Colorado River. CREDA also finds that these impacts are not adequately recognized, analyzed or measured in the DEIS.

When the DEIS is being used as a planning process, which seems to be the case here, it is essential that it be a process which integrates impacts on all the resources. It is clear that power resources have not been fully integrated into this planning and analyses. The analyses of impacts does not accurately reflect: 1) the operating restraints on certain of the power plants, 2) how the plants are operated, or 3) the impacts of changed power operations on the firm power contractors. For example:

I. Sec. 3.10.2.2.1 - does not seem to recognize the greatly reduced generating capacity at Glen Canyon Dam which resulted from the Glen Canyon Dam EIS and Record of Decision. It also seems that the study assumed operating points at which both Glen Canyon and Hoover operate most efficiently. The plants are most often not operated at these points due to scheduling entities' use of the plants for regulation and reserves. The assumption skews the results and tends to minimize the impacts of changed operations.

II. Sec. 3.10.2.2.2 - is far too simplistic. In its assumption that the impacts will felt through a large area (WSCC) and are therefore minimal. What must be measured are the direct financial impacts to the power contractors. In the case of

1: The EIS analysis is intended to be an analysis of the alternatives compared to the baseline projections. As discussed in Section 3.1.3, baseline projections are used to compare possible future without interim surplus criteria to future with interim surplus criteria conditions. Under baseline conditions and each of the alternatives, the fact that reservoir elevations will have an increased probability to fall over time is predominantly a result of increased depletions in the Upper Basin states. Reclamation believes that the level of analysis for energy resources presented in the EIS, and the comparison of the alternatives to baseline conditions appropriately identifies the potential effects of interim surplus criteria.

2: The analysis shows the effects of each alternative reservoir operating strategy when compared to the baseline strategy. Increases or decreases in energy and capacity between the baseline strategy and the alternatives are shown on a yearly basis. This analysis accurately reflects the operating constraints on the powerplants in the modeling parameters. Powerplant operations change daily with differing conditions, but from an overall power production perspective, the analysis results provide a useful comparison of the anticipated reduction in energy and capacity within the WSCC region. A substantial portion of the reduction is included in baseline conditions; alternatives would result in incremental changes. The quantities of capacity needed to replace incremental reductions, while not significant when compared to the total capacity installed in the WSCC region, may have impacts on power contractors that must purchase replacement power. These impacts were not analyzed in the FEIS.

3: This analysis is not intended to analyze the effects of the Glen Canyon Dam Operation EIS and Record of Decision. The assumptions that were used for interim surplus criteria modeling related to operating points were used in the analysis of power production for both baseline conditions and each of the alternatives. Since the analysis contained in this EIS is concerned with the difference between baseline conditions and the alternatives and the underlying assumptions are the same for all cases, the net difference should not change substantially.

4: Please see response to Comment 16-2

## COMMENT LETTER

## RESPONSES

cont'd

Glen Canyon, as power production is reduced there is a direct and immediate upward impact on power rates. There is also an immediate additional cost to the contractors who must pay the costs of replacing the lost energy and capacity. The DEIS is completely silent on these impacts.

5

III. Sec. 3.10.2.3.1 - the proposed "easy" solution of buying replacement power from the short-term market trivializes the problem. The short-term wholesale power market this summer is causing major problems and severe economic impacts in San Diego and other areas across the WSCC. Industries are shutting down in California and the Northwest because of the short-term market prices.

6

IV. Sec. 3.10.2.3.2 - cites the impact on the basis of an average of the study years. This is a gross oversimplification that minimizes the real financial impacts to power customers.

7

Overall the DEIS seems to be deliberately minimizing the impacts of power by using annual averages and measuring impacts on a regional basis. It does not deal with the direct financial impacts to power contractors. These contractors in the Upper Colorado River Basin Project are repaying 100% of the federal investment in power features and over 95% of the investment in irrigation projects, and are funding nearly all of the subsequent environmental studies and mitigation projects. Surely, the impacts of the surplus criteria on this important part of the equation deserve full analysis and discussion in the EIS process. The DEIS is significantly incomplete without these analyses. CREDAs will be glad to assist in any way possible to achieve this goal.

I may be reached at (480) 557-0987 or email [creda@uswest.net](mailto:creda@uswest.net)

Sincerely,

Leslie James  
Executive Director

Cc: CREDAs Board

5: Please see response to Comment 16-2

6: Please see response to Comment 16-2

7: Please see response to Comment 16-2

0009075urpCrtEIS

COLORADO RIVER WATER  
CONSERVATION DISTRICT

Protecting Western Colorado Water Since 1914

SEP 11 2000

September 8, 2000

SENT VIA FACSIMILE U. S. Mail

Mr. Jayne Harkins  
Attention BCDD-4600  
U. S. Bureau of Reclamation  
P. O. Box 61470  
Boulder City, NV 89006 1470

Dear Ms. Harkins:

The Colorado River Water Conservation District ("CRWCD") thanks you for the opportunity to review and comment on the Bureau of Reclamation's July 2000 "Colorado River Interim Surplus Criteria Draft Environmental Impact Statement" ("DEIS"). The CRWCD is an agency of Western Colorado with a mission to promote the protection, conservation and development of Colorado's water resources in order to secure the greatest utilization of those resources for the benefit of present and future generations. The CRWCD has reviewed the DEIS and provides the following comments:

1 The CRWCD strongly supports the Interim Surplus Criteria developed by the seven Colorado River basin states and noticed in the Federal Register of August 8, 2000 as Supplemental Information to the DEIS. These criteria are a modification of the six state proposal described in the DEIS. Based on our analysis of the seven state proposal, we believe that proposal is superior to the six state proposal in the DEIS because there is less impact to reservoir storage, yet it still provides the water supplies sought. The interim criteria proposed by the seven basin states were developed using a 70R strategy, which is and has been the standard Colorado River reservoir operating strategy since the mid 1990s with one exception. While the 75R strategy has been reviewed on occasion as part of the annual operating plan development, it has never been the standard and we object to the DEIS suggesting that it is or has been the standard.

2 The seven state interim criteria were also developed using the Upper Colorado River Basin depletion schedule adopted by the Upper Colorado River Commission in December 1999. The December 1999 depletion schedule shows that depletions are occurring slightly more rapidly than in the Upper Colorado River Basin depletion schedule used in the DEIS. However, the most important point to make is that, while these differences resulted in modifications to the six state

3 cont'd  
below

1: The preferred alternative in this FEIS is derived from the Seven States proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need for the proposed action, Reclamation policy and operational procedures.

2: The baseline has been changed to a 70R strategy for the FEIS.

3: The preferred alternative in this FEIS is derived from the Draft Seven States Proposal. The Upper Basin depletion schedule prepared in December 1999 was used to model the operation of the baseline and all the alternatives in this FEIS. The baseline has also been changed to the 70R operating strategy.

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MR. JAYNT HARRIS  
SEPTEMBER 8, 2000  
PAGE 1

3  
cont'd

proposal discussed in the DEIS, those differences and the impacts are within the range of alternatives and impacts analyzed in the DEIS. Because of its knowledge of the development of the DEIS supplemental information, the CRWCD is comfortable that the seven state proposal in the superior alternative and would likely strongly oppose the adoption of any interim surplus criteria that would change the standard or "no action alternative" in any other way.

4

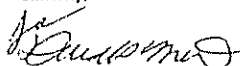
Furthermore, the CRWCD, in its review of the DEIS, finds that there are a number of views expressed in the DEIS concerning the "law of the river" with which it disagrees or does not wholly concur. However, these differences do not significantly impact the results of the DEIS and, thus, the CRWCD does not see any merit in debating them in the DEIS process. However, the CRWCD wants it clearly understood by all parties that it is not in any way changing long standing positions on Colorado River issues as a result of the way they may be stated in the DEIS. Rather, we would strongly encourage the Bureau of Reclamation to include the usual disclaimer it uses to address the differences that exist with respect to the "law of the river."

5

In particular, in Section 1.4.2 of the Glen Canyon Dam Operations, the discussion of Glen Canyon operations is not precise. The Colorado River Compact requires the Upper Division states to not cause the flow at Lee Ferry to be depleted below an aggregate of 75 MAF (plus 1/4 of the Mexican Treaty Deficiency, if any) for any period of ten consecutive years. The Upper Division states have never agreed with the 8.23 MAF minimum objective release identified in the Long Rang Operating Criteria. We would encourage that language be added to this section and others to fairly reflect what the compact requires.

In conclusion, even though we disagree with the way in which the law of the river is characterized in a number of places in the DEIS, we believe the DEIS and the supplemental information fairly portray the potential impacts of the possible actions and recommend that the Secretary adopt and implement the Seven Basin States Interim Surplus Guidelines. Thank you for considering the CRWCD's comments on this very important matter.

Sincerely,



R. Eric Kulin  
General Manager

4: Comment noted

5: Glen Canyon Dam is operated according to the LROC as discussed in Section 1.4.2. Section 1.3.3 discusses the LROC and the process for review and modification of the LROC. This EIS does not address disparities between the LROC and the Colorado River Compact. Concerns over the relationship between the Colorado River Compact and the LROC should be addressed through the LROC review process.

## RESPONSES



August 30, 2000

Jayne Harkins  
Attention: BC00-460  
PO Box 61470  
Boulder City, Nevada 89006

Dear Ms Harkins:

We have reviewed the Colorado River Interim Surplus Guidelines prepared as the "Seven Basin States Consensus Proposal." We concur with the method that has been negotiated between the basin states and urge that the Secretary of Interior adopt this plan, as written, as the preferred alternative.

1. The preferred alternative in this FEIS is derived from the Seven States Proposal Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with Reclamation policy and operational procedures

Sincerely,

Barry C. Blane

Craig E. Johansen, President  
Cottonwood Creek Consolidated Irrigation Co

cc: Larry Anderson, Director  
Division of Water Resources

## EMERY WATER CONSERVANCY DISTRICT

P.O. Box 998  
Castle Dale, Utah 84513  
Telephone (801) 381-2311

September 11, 2000

Jayne Harkins  
Attention: DC00-460  
PO Box 61470  
Hendler City, Nevada 89006

*DC00-460  
4600*

Dear Ms. Harkins:

1 We have reviewed the Colorado River Interim Surplus Guidelines prepared as the "Seven Basin States Consensus Proposal." We concur with the method that has been negotiated between the basin states and urge that the Secretary of the Interior adopt this plan, as written in the Federal Register / Vol. 65, No. 153 / Tuesday, August 8, 2000 as the preferred alternative

1: See response to Comment 13-19

Sincerely,



Eugene Johansen, President  
Emery Water Conservancy District

cc: Larry Anderson, Director  
Division of Water Resources

## COMMENT LETTER

## RESPONSES

## OPERATING COMMITTEE

Gary Wilson President  
Paul Morris Vice President

Neil Dalton  
Neil Dalton  
A. Dan Holzman  
John Key  
Karl Tangen

Dale Plerson Manager/Operator  
Secretary/Treasurer

Phone: (435) 259-8121

## GRAND WATER &amp; SEWER

## SERVICE AGENCY

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P.O. Box 1046  
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Karl Tangen  
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George Whinn  
Gary Wilson

FAX (435) 259-8122

To: Ms. Jayne Harkins  
Attention BC00-4600  
From: Gary Wilson, President  
Subj: Comment on DEIS, Colorado River Interim Surplus Criteria

1

Grand Water & Sewer Service Agency would like to voice support of the "Seven State Proposal" for Interim Surplus Guidelines on the Colorado River. This proposal seems the most sensible to assure that each State in the Colorado River Compact will eventually receive its allotted share of Colorado River water. The proposal accomplishes this in a manner which places less burden on those states currently using in excess of their allotted share and at little or no risk to upper basin states.

1: See response to Comment 13-19

10 1 11

By: [Signature]  
4600





# IMPERIAL IRRIGATION DISTRICT

OPERATING HEADQUARTERS • P.O. BOX 937 • IMPERIAL, CALIFORNIA 92351

RPM

SEP 11 2000

September 8, 2000

**FAXED & MAILED**

Robert W. Johnson  
Regional Director  
Lower Colorado Region  
Attn: Jayne Harkins (LC-4600)  
Bureau of Reclamation  
P.O. Box 61470  
Boulder City, NV 89006-1470

*Reced/Reid  
4600*

Dear Mr. Johnson:

**Subject: Comments on Draft Environmental Impact Statement, Colorado River  
Interim Surplus Criteria**

Imperial Irrigation District (IID) has reviewed and provides the following comments on the United States Bureau of Reclamation's (Reclamation) Draft Environmental Impact Statement (DEIS) regarding Colorado River Interim Surplus Criteria

- 1 The DEIS has analyzed the following alternatives: no action alternative, Flood Control alternative, Six States alternative, California alternative, and Shortage Protection alternative. The Final Environmental Impact Statement (FEIS) should analyze Interim Surplus Criteria Guidelines ("Guidelines") developed by the Colorado River Basin states, as published by Reclamation in Federal Register/Vol 65, No. 153/August 8, 2000. IID has participated in the development of the Guidelines and supports the interim surplus criteria proposed therein.
- 2 From a general perspective, IID offers the following comments on the draft EIS. First, in order to maintain the public record, IID would like to remind Reclamation that compliance with NEPA in this situation is unnecessary. This issue was thoroughly addressed in comments from a variety of the basin states when Reclamation first announced its intention to undertake a NEPA compliance process for the interim criteria. As explained at that time, this interim criteria is well within the Secretary's existing authority to adjust operations at Hoover Dam within the terms of the Long Range Operating Criteria. Accordingly, there is no new "action" here upon which to base the need for NEPA compliance. Engaging in this sort of gratuitous NEPA compliance process is not authorized by NEPA, and therefore Reclamation's decision to undertake NEPA compliance in this situation only serves to confuse and mislead the public and will also serve to mislead a court should this matter ever become involved in litigation.
- 3 Second, also for the record, IID objects to the decision of Reclamation to extend NEPA analysis into the country of Mexico (see sections 3.2 and 3.16). Although Reclamation relies on an old Executive Order and CEO guidelines for this action, those authorities predate more recent

1: The preferred alternative in this FEIS is derived from the Seven States Proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need for the proposed action. Reclamation policy and operational procedures

2: See response to Comment 43-2

3: The applicable guidance appears to be contrary to the comment. EO 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957, 1979 WL 25866 (Pres.) requires that Federal agencies "consider the significant effects of their actions on the environment outside the U.S. its territories and possessions." The more recent CEQ guidance for transboundary impacts, dated July 1, 1997, appears consistent with the approach in the Executive Order. See response to Comment 22-5

## COMMENT LETTER

Mr. Robert W. Johnson  
September 8, 2000  
Page 2 of 3

cont'd

judicial decisions on this issue, and the cited authorities do not take into account the Supreme Court imposed presumption against the extraterritorial application of federal domestic laws. Furthermore, Reclamation's extension of the NEPA analysis into Mexico ignores the dominant role of the 1944 Treaty between the United States and Mexico governing uses from the Colorado River. Both the Executive Order and the CEO guidelines recognize that a controlling treaty may obviate the need for such NEPA compliance. Again, this sort of action only serves to mislead the public and in this case the citizens of Mexico as well.

4

Third, although the draft EIS appears to be silent on the matter, IID is concerned that the draft EIS presents a platform for Reclamation to engage in formal consultation under the Endangered Species Act (ESA) in relation to listed species located in Mexico. Because of other documents previously submitted to Reclamation, Reclamation is fully aware of the arguments posed by IID and the other California Colorado River using entities as to why the ESA does not apply in any way to listed species in Mexico. Fundamentally, IID's position rests on the wording of the existing ESA regulations, which are domestically oriented, and also on the Supreme Court-imposed presumption against the extraterritorial application of domestic laws. Since Reclamation has not indicated its intention to engage in formal or informal consultation under the ESA, IID urges Reclamation to maintain that position in future stages of this NEPA compliance process.

4: Comment noted

5

Fourth, IID notes that in section 2.2.3 of the draft EIS Reclamation explains why the proposal submitted by the Pacific Institute and others is not analyzed in this draft EIS. IID agrees with the rationale advanced by Reclamation to support that decision. The recommendations made in the Pacific Institute proposal are expressly contrary to the terms of the 1944 Treaty with Mexico. Any deviation from that treaty, either for water quantity or water quality purposes, must be addressed through the authority of the Secretary of State, the President, and the Congress to control foreign affairs. There should be no attempt to analyze or effectuate such proposed action through the authority of the Department of the Interior or through application of the ESA or NEPA.

5: The Pacific Institute Proposal was considered but not analyzed as an alternative in this FEIS. See responses to Comment 11-2 and 11-6.

6

Regarding the technical analysis in general, IID agrees with the framework and the approach for the DEIS. The definition and estimation of the impacts as "incremental differences in probabilities (or projected circumstances associated with a given probability) between baseline conditions and the alternatives" (DEIS, p. 3-14) is appropriate. The application of the hydrologic modeling to quantify the impacts in this manner is also appropriate. However, we have the following concerns:

6: Comment noted

7

The DEIS makes an assumption that the conditions modeled for baseline conditions and Flood Control alternative do not include the implementation of the California 4-4 Plan and water transfers described in *Key Terms for Quantification Settlement Among the State of California*, IID, CVWD, and MWD, dated October 15, 1999 ("Key Terms"). IID recognizes that the adoption of interim surplus criteria acceptable to MWD is one of Conditions Precedent in the Key Terms. However, the purpose of this DEIS is to evaluate the impacts of the interim surplus criteria, not the impacts of the water transfers described in the Key Terms. By modeling the baseline demands without the water transfers and the demands for the action alternatives with the water transfers, the DEIS has effectively evaluated the combined impacts of the interim surplus criteria and the water transfers. IID believes that the impacts of the interim surplus criteria should be isolated by using the same demands for the baseline conditions and for the action alternatives. The demands should include both the interim surplus criteria and water

7: All alternatives analyzed in the FEIS assume implementation of the California Colorado River Water Use Plan and intrastate water transfers. See response to Comment 37-11 for more detail.

## COMMENT LETTER

## RESPONSES

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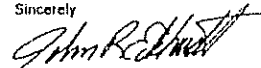
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transfers, and should apply to both baseline and action alternatives. The impacts of each of the water transfers described in the Key Terms will be evaluated in separate environmental reviews, as appropriate.

In summary, IID believes that the impacts of the Interim Surplus Criteria should be analyzed using the same demands for both baseline conditions and the action alternatives. This will help ensure that the impacts of the proposed interim surplus criteria are evaluated correctly. In addition, IID urges Reclamation to seriously consider IID's comments as to the applicability of both NEPA and the ESA to this process as it relates to resources or species in Mexico.

IID appreciates the opportunity to comment on the DEIS.

Sincerely,

  
JOHN R. ECKHARDT, Ph.D., P.E.  
Assistant to the General Manager

JREW  
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Copy: David Zimmerman, CIB  
Dennis Underwood, MYND  
Tom Levy, CVWD  
Maureen Stephenson, SDCWA

## COMMENT LETTER

## RESPONSES

IRRIGATION & ELECTRICAL DISTRICTS  
ASSOCIATION OF ARIZONALFA LYNN  
CHAIRMAN OF THE BOARDR GAIL PEARCE  
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CLIVE CARLIS  
SECRETARY OF THE BOARDROBERT S. LYNN  
ASSISTANT SECRETARY OF THE BOARDTELECOPIED AND MAILED  
(Fax no.: 702-293-8042)

September 8, 2000

BCL/BJL  
4600Ms. Jayne Harkins, 8C00-4600  
Lower Colorado Regional Office  
Bureau of Reclamation  
P.O. Box 61470  
Boulder City, Nevada 89006-1470Re: Comments on the Draft Environmental Impact Statement for  
Lower Colorado River Interim Surplus Criteria (ISC), 65  
Fed. Reg. 42026 (July 7, 2000) and 65 Fed. Reg. 48533 (August  
8, 2000)

Dear Ms. Harkins:

These comments are intended to supplement my oral comments given at the Public Hearing on this subject on August 24, 2000 in Phoenix, Arizona, which oral comments are incorporated by reference. We also endorse and support the comments that have been filed by the Colorado River Energy Distributors' Association and the oral comments and written comments provided by the Arizona Power Authority Commission, the Arizona Department of Water Resources and the Central Arizona Water Conservation District.

These comments will deal with four subjects: the comment period and late comments, the preferred alternative, power impacts, and the extraterritorial application of the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA).

COMMENT PERIOD

At the hearing in Phoenix, there was some discussion about the need for acquisition of additional information and additional comments. After the original notice of availability and the availability of the Draft Environmental Impact Statement (DEIS), the seven Basin states proposed an alternative not included in the DEIS. That alternative was published in the Federal Register on August 8, 2000 and has since undergone some additional modification. The question arose whether the Bureau of Reclamation (Reclamation) could accept additional comments and information after the close of the comment period on September 8, 2000. The simple answer to that question is yes. Commenting is covered by the Council on Environmental Quality (CEQ) regulations

1. Consultation and coordination is an ongoing process during the preparation of an EIS. Reclamation is aware of the regulations and guidance you cite, and makes every reasonable effort to include and respond to late comments from regulatory agencies. To the extent possible, Reclamation also includes other substantive comments received after the close of the public comment period for the DEIS.

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Ms. Jayne Harkins  
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at 40 C.F.R., Part 1503. While the regulations in that part do not specifically address the question of comments received after the expiration of a comment period set under 40 C.F.R. § 1501.6, the regulations do anticipate that all substantive comments received will be attached to the Final Environmental Impact Statement (FEIS) and those meriting response will be included in the responses in the FEIS. The clear implication is that substance will control over form and that information received prior to the completion of the FEIS should be included in the process. Additionally, the Department of Interior Manual, at 516 DM 4 17, says:

"B. When other commenters are late, their comments should be included in the final EIS to the extent practicable."

And the Bureau of Reclamation Handbook, paragraph 8.15.2.4 contains a similar requirement.

Thus, additional information and comments can be obtained by Reclamation for the FEIS. It would be important to have that material in writing so it can be included with the FEIS, as required by 40 C.F.R. § 1503.4(b).

#### PREFERRED ALTERNATIVE

In the FEIS, Reclamation must designate a preferred alternative 40 C.F.R. § 1502.14(e). That should be the seven-state alternative articulated in the August 8, 2000 Federal Register notice as further modified and discussed at the Phoenix hearing and, we presume, the other hearings. NEPA is a planning process and the EIS a planning analysis document focused on environmental consequences to a proposed action and reasonable alternatives. As such, it is perfectly positioned to make the sort of adjustments necessary that are called for here in order for the seven-state alternative to be the preferred alternative in the final EIS. See Answer to Question 29b., 40 Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations. Indeed, the dialogue necessary to refine the seven-state alternative as the preferred alternative enhances the quality of the NEPA process by clarifying the proposed action and allowing the environmental analysis of it to be more discrete and comprehensive.

#### POWER IMPACTS

Without belaboring comments you have already received and other comments you are receiving on this subject, from the Arizona Power Authority, the Colorado River Energy Distributors' Association and others, let me focus on the cure to the

2. The preferred alternative in this FEIS is derived from the Seven State Proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need for the proposed action. Reclamation policy and operational procedures

3. Comment noted. Reclamation believes that the level of analysis for energy resources presented in the EIS appropriately identifies the potential effects of interim surplus criteria compared with baseline conditions

## COMMENT LETTER

## RESPONSES

Ms. Jayne Markins  
September 8, 2000  
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Inadequacies of Section 3.10 on energy resources in Chapter 3 on Affected Environment and Environmental Consequences. You must agree that the oversimplified discussion in this section does not pass the pink-face test. This region of the country is no longer capacity rich nor is it in a surplus condition with regard to energy, especially in summer months. If such surpluses existed, the 13 merchant plants being built in Arizona, or at least planned, would not even be being discussed. Nor would power bills have tripled this summer in San Diego. To correct the deficiencies in impact analysis on customers of the affected hydropower resources and the total lack of analysis of reliability impacts, I suggested to you at the hearing and I will repeat the suggestion that you reach out to the Western Systems Coordinating Council, the Colorado River Energy Distributors' Association, the Arizona Power Authority and other power customer organizations, including ours, for information on impacts that can be incorporated in the final EIS. Others have already volunteered to assist and we do likewise. Those impacts must be quantified because the EIS is totally devoid, as are all of the action proposals, of any discussion of compensating those who will lose benefits from lost hydropower production and are not in a position to enjoy any of the benefits of water supply in return during times of shortage. One cannot ignore the class of beneficiaries of the hydropower projects involved that have this single source of benefit from these multi purpose hydropower projects, i.e., hydropower.

EXTRATERRITORIAL APPLICATION OF NEPA

1. It is inappropriate and unnecessary to include an analysis of impacts to the Mexican Delta in the ISC EIS.

A. There is a strong presumption against extraterritorial application of statutes.

"It is a longstanding principle of American law 'that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.' . . . This 'canon of construction . . . is a valid approach whereby unexpressed congressional intent may be ascertained.'" *EECC v. Arabian American Oil Co. ("Arasco")*, 499 U.S. 244, 248 (1991) (quoting *Foley Bros. v. Ellard*, 336 U.S. 201, 205 (1949)).

"The general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done. . . . [This] would lead, in case of doubt, to a construction of any statute as intended to be confined in its operation and effect to the territorial limits over which the lawmaker has general and legitimate power."

4: The applicable guidance appears to be contrary to your comment. EO 12114, Environmental Effects Abroad of Major Federal Actions, 44 FR 1957, 1979 WL 25866 (Pres.) requires that Federal agencies "consider the significant effects of their actions on the environment outside the U.S., its territories and possessions." Recent CEQ guidance for transboundary impacts, dated July 1, 1997, appears consistent with the approach in the Executive Order.

(Ms. Jayne Watkins  
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American Banana Co. v. United Fruit Co., 213 U.S. 347, 356, 357 (1909).

The presumption against extraterritorial application is expressed most clearly by the holding in Aramco, 499 U.S. 244 (1991). The Aramco Court applied the presumption to Title VII, concluding that the statute did not apply to employment discrimination by an American company against an American citizen that occurred beyond U.S. boundaries. Despite the argued evidence that Congress intended Title VII to apply extraterritorially (i.e., Congress' specific reference which exempted employers "with respect to the employment of aliens outside any State" 42 U.S.C. 2000e-1 (1988)), Chief Justice Rehnquist held that only a "clear statement" in the language of the statute would be sufficient to overcome the presumption. 499 U.S. at 250.

Congress subsequently amended Title VII to overcome the result in Aramco. See 42 U.S.C. 2000e(f) (1994); id. 2000e-1(c); and id. 2000e-1(b). However, this does nothing to the presumption as declared by Chief Justice Rehnquist. In fact, Congress' action in this instance highlights three of the six (see II F, post) sound policy reasons for the presumption. They are (1) the presumption provides legislators with a clear rule which allows them to predict the application of their statutes; (2) "the commonsense notion that Congress generally legislates with domestic concerns in mind," (Smith v. United States, 507 U.S. 197, 204 (1993)); and (3) separation-of-powers concerns (i.e., determination of how to apply federal legislation is beyond the constitutional scope of the judicial branch).

Furthermore, the Supreme Court has recently applied the presumption against extraterritoriality not only to Title VII, but also to the Foreign Sovereign Immunities Act, the Federal Tort Claims Act, the Immigration and Nationality Act, and, in a concurring opinion, Justice Stevens applied it to the Endangered Species Act. See Argentine Republic v. Amerasia Shipping Corp., 408 U.S. 420, 440-41 (1989); Smith v. United States, 507 U.S. 197, 203-04 (1993); Sale v. Haitian Century Council, Inc., 509 U.S. 155, 173-74 (1993); and Lujan v. Defenders of Wildlife, 504 U.S. 555, 585-89 (1992), respectively. In Smith, Chief Justice Rehnquist applied the presumption again noting that it requires "clear evidence of congressional intent." 507 U.S. at 204. Similarly, in Sale, the Court held that Acts of Congress "do not have extraterritorial application unless such an intent is clearly manifested." 509 U.S. at 180. Therefore, in order to rebut the presumption against extraterritoriality, the statute must reflect the clear intent of Congress to do so. Language subject to varied interpretation is not sufficient. Aramco, 499 U.S. 244, 266-70 (1991).

cont'd

Ms. Jayne Harkins  
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B. NEPA does not cover actions taken in other sovereign nations

The issue of whether NEPA may be applied extraterritorially has yet to come before the Supreme Court of the United States. However, as noted above, there is a strong presumption against extraterritorial application of statutes, which includes NEPA, unless Congress clearly expresses otherwise. *Aramco*, 499 U.S. 244, 248 (1991). A review of the lower courts' case law supports applying this presumption to NEPA.

Three cases are most instructive in concluding that NEPA should have no extraterritorial application here. The first is *Natural Resources Defense Council, Inc. v. Nuclear Regulatory Commission* ("NRDC"), 208 U.S. App. D.C. 216, 647 F.2d 1345 (D.C. Cir. 1981). NRDC concerned nuclear shipments to the Philippines, to which the court held that "NEPA does not apply" extraterritorially. *Id.* at 1366. While limited to nuclear export licensing decisions, the court explained NEPA's legislative history illuminates nothing in regard to extraterritorial application. Thus, in the absence of any "clear evidence of congressional intent" the presumption against extraterritoriality will prevail. *Smith v. United States*, 507 U.S. 197, 204 (1993).

The second case regarding the extraterritoriality of NEPA is *Environmental Defense Fund v. Massey* ("EDF"), 300 U.S. App. D.C. 65, 986 F.2d 520 (D.C. Cir. 1993). The court in EDF held that the presumption did not apply, and consequently that NEPA did apply to the National Science Foundation's attempt to incinerate food wastes in Antarctica. However, the court relied heavily, if not entirely, upon Antarctica's sovereignless status and the potential "clashes between our laws and those of other nations." *Id.* at 532.

Most importantly, the court limited its holding to the specific facts of that case and did "not decide today how NEPA might apply to actions in a case involving an actual foreign sovereign..." *Id.* at 837. And EDF also preceded Chief Justice Rehnquist's reaffirmation in *Smith*, 507 U.S. at 204: "The presumption is rooted in a number of considerations, not the least of which is the commonsense notion that Congress generally legislates with domestic concerns in mind." Thus, the EDF holding is limited to its unique facts.

The third case that addresses extraterritorial application of NEPA also addresses the holding in EDF. In *NEPA Coalition of Japan v. Aspin* ("Aspin"), the court distinguished EDF, stating, "The [EDF] court expressly limited its ruling by refusing to decide whether NEPA might apply to actions involving an internationally recognized sovereign power." 837 F.Supp. 466, 467 (1993) (citing EDF, 986 F.2d at 537). The Aspin case asks whether NEPA requires the Department of Defense to prepare an EIS

5: NEPA does cover actions taken in the United States. The Executive Order 12114 is used to provide the decisionmaker complete information regarding the impact of the decision (See Section 1-1 of the EO in Attachment B). Additional guidelines on the applicability of NEPA to transboundary impacts that may occur as a result of proposed federal actions in the United States are contained in a memorandum prepared by the Executive Office of the President, Council on Environmental Quality. A copy of this document (CEQ Guidance on NEPA Analyses for Transboundary Impacts - July 1, 1997) is also provided in Attachment B.



Ms. Jayne Harkins  
September 8, 2008  
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for military installations in Japan. The court held that "the presumption against extraterritoriality not only is applicable, but particularly applies in this case because there are clear foreign policy and treaty concerns involving a security relationship between the United States and a sovereign power." 837 F. Supp. at 468. A similar result not involving a treaty was reached in *Greenpeace, USA v. Stone*, 748 F.Supp. 749 (D. Hawaii 1990), appeal dismissed as moot, 924 F.2d 175 (9th Cir. 1991). Therefore, because of the above-cited case law, NEPA remains subject to the presumption against extraterritoriality in other sovereign nations.

C. The Treaty implications here require restraint

1. Water deliveries are not the only Treaty matters that can be impacted

Treaty relations and relationships will be impacted even if water deliveries are not.

"[The] presumption [against extraterritorial application] has special force when we are construing treaty and statutory provisions that may involve foreign and military affairs for which the President has unique responsibility." *Sale v. Hawaiian Centers Council, Inc.*, 509 U.S. 155, 180 (1993) (quoting *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936)).

The DEIS states that treaty water deliveries to Mexico (1.5 Maf/year) will not be affected by the implementation of the ISC Chapter 3, Subsection 3.16.3. However, availability of treaty surplus water is specifically excluded from the DEIS Chapter 1, Subsection 1.1.4. That, in and of itself, impacts relationships governed by the 1944 U.S./Mexico Treaty and Minute 242. It is literally impossible to assess impacts in Mexico, presumably in the Mexican Delta, without affecting relationships in Mexico, including relationships with the Mexican government. What sort of separate consultations with the Mexican government through the International Boundary Water Commission (IBWC) result from IBWC cooperating agency status? Conduct of studies? Peer review? Where does it stop?

2. If there are no treaty water delivery impacts, then there is even less reason to invade Mexican sovereignty, especially for blatantly speculative analysis purposes

Since water is the *sine qua non* for Mexican Delta impacts, if no changes in treaty water deliveries will result, an impact analysis is irrelevant, worthless, and a waste of scarce federal funds. Continued compliance with the treaty is the only relevant subject. Since that is a given, nothing else remains to be done.

6. Reclamation agrees. See Chapter 5 for further information regarding consultation with Mexico

7. See response to Comments 22-4 and 22-5

Ms. Jayne Harkins  
September 8, 2000  
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cont'd

The DEIS notes that its analysis is keyed to the availability of "excess" water. However, the DEIS acknowledges that Mexico has no obligation to allow such water to flow through the Delta. Subsection 3.16.2. Indeed, the DEIS assumes consumptive use of such water. Ibid. Then the DEIS blithely goes on to model and discuss excess flows that are presumed to be targets of consumptive use demands as if they will flow through the Delta. This is sheer speculation and not required under NEPA. *Environmental Defense Fund, Inc. v. Hoffman*, 566 F.2d 1060 (9th Cir. 1977); *Life of the Land v. Brinegar*, 485 F.2d 460 (9th Cir. 1973); *Forty Not Asked Questions*, No. 19.

D Executive Order 12114 does not support extraterritorial NEPA application

B: See response to Comment 22-4

8

E.O. 12114 is cited as support for extraterritorial NEPA analysis. It cannot support studying the impacts of the ISC in Mexico for three reasons. First, it prestates all of the relevant case law which contradict its basic premise, including *HRDC* and *Aspin*, as well as *Smith*, *Sale*, etc. Second, it exempts actions not having significant effect outside the United States. Third, it exempts "actions taken...pursuant to the direction of [a] Cabinet officer when the national interest is involved" i.e. when a treaty is implicated.

E The memorandum entitled "Council on Environmental Quality Guidance on NEPA Analyses for Transboundary Impacts" does not justify extraterritorial NEPA application where, as here, a treaty is clearly implicated.

9: Reclamation notes that the cited CEQ guidance memorandum does not provide exemptions based on instances where treaties exist

9

The CEQ Memorandum itself cautions that the scoping process should eliminate transboundary analyses if the information is not needed. Thus, here it would exclude Section 3.16 itself. But to the extent Reclamation relies on this document, we hasten to point out its two fatal flaws. First, it totally disregards the presumption against extraterritorial application. Second, it totally avoids discussion of applications of NEPA where treaty relationships are involved. Since the document recognizes that it has no force beyond existing case law, it provides no support here in the face of *HRDC* and *Aspin*.

#### EXTRATERRITORIAL APPLICATION OF ESA

11. ISC decisions cannot be based on analysis of ESA-related impacts, if any, to the Mexican Delta resulting from river operations conducted pursuant to the ISC.

Ms. Jayne Hartline  
September 6, 2000  
Page 6

- 10 A Using the EIS to examine extraterritorial impacts to endangered and threatened species is extraterritorial application of the ESA
- By definition, any analysis which accounts for potential impacts beyond our borders necessarily is applying the Endangered Species Act extraterritorially. See: Lujan v. Defenders of Wildlife, 504 U.S. 555, 585-89 (1992). - Stevens, J., concurring in the judgment. Using a Mexican Delta endangered and threatened species analysis as part of the EIS extends the force of the ESA across the Southern International Border with Mexico, when that analysis is presented to the decision-maker, here the Secretary of the Interior.
- 11 B There is a strong presumption against extraterritorial application of statutes absent clearly expressed Congressional intent (See I A, supra)
- C Section 7(a)(2) of the Endangered Species Act lacks any Congressional intent to apply these provisions extraterritorially.
- D Section 7(a)(2)'s silence on extraterritorial application requires a contrary conclusion.
- In his concurring opinion, Justice Stevens addressed this precise point. He stated, "[t]he absence of any explicit statement that the consultation requirement is applicable to agency actions in foreign countries suggests that Congress did not intend that 7(a)(2) apply extraterritorially." Lujan v. Defenders of Wildlife, 504 U.S. 555, 588 (1992). The only geographic reference in Section 7(a)(2) is "affected States" as it applies to critical habitat. Clearly, Section 7(a)(2) lacks any explicit reference to application in foreign countries and thus, Congress did not intend that it apply extraterritorially. Moreover, in reviewing Title VII, the Court held that vague references such as "outside any State" were not sufficient to apply that statute extraterritorially. Aramco, 499 U.S. at 250. Thus, if written, albeit vague, references were not enough to warrant an expression of Congressional intent, surely silence on extraterritorial application must also fail.
- 12 E Section 7's silence reflects Congressional intent
- As noted by Justice Stevens concurring opinion in Lujan v. Defenders of Wildlife, Sections 8 and 9 of the Endangered Species Act specifically address application of these sections abroad. 504 U.S. at 580. Section 7 does not. Thus, Congress clearly knew how to draft extraterritorial application of ESA provisions.
- 13

10 ESA consultation on this domestic action was completed between Reclamation and the Service and NMFS as directed by the Department of Interior Solicitor and the Commissioner of Reclamation. There is no final resolution of the legal question of application of the ESA to extraterritorial impacts. Reclamation and the Department recognize that this consultation may provide more information than the law requires. However, doing so provides the Secretary a better basis for his determinations and a better understanding of potential impacts.

11: Comment noted

12: Comment noted

13: Comment noted

Ms. Jayne Harkins  
September 8, 2000  
Page 9

cont'd

yet chose not to in Section 7. As reasoned above, this absence of Congressional intent necessarily must yield to the presumption against extraterritorial application of statutes

B Fish and Wildlife Service's own regulations prevent extraterritorial application

1 The 1986 changes in the regulations specifically limited application of ESA.

14 Comment noted

The scope of the ESA is expressed, in pertinent part, as follows:

Section 7(a)(2) of the [ESA] requires every Federal Agency, in consultation with and with the assistance of the Secretary, to insure that any action it authorizes, funds or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species." (Emphasis added.) 50 C.F.R. § 402.01

14

The Secretary of the Interior and the Secretary of Commerce have consistently taken the position that they need not designate critical habitat in foreign countries. See 42 Fed. Reg. 4869 (1977) (initial regulations of the Fish and Wildlife Service ("FWS") and the National Marine Fisheries Service ("NMFS")).

Conversely, in 1978 the FWS and NMFS promulgated a joint regulation stating that the obligations imposed under 7(a)(2) extend abroad. However, almost immediately the Department of the Interior began to reexamine its position. Consequently, in 1983 a revised joint regulation, reinterpreting 7(a)(2) to require consultation only for actions taken in the United States or on the high seas, was proposed (48 Fed. Reg. 29990) and in 1986 promulgated (51 Fed. Reg. 19926; 50 C.F.R. 402.01 (1991)).

That this restriction applies to effects as well as actions must follow for it would prove "illogical to conclude that Congress required federal agencies to avoid jeopardy to endangered species abroad, but not destruction of critical habitat abroad." Lujan, 504 U.S. 555, 588.

This analysis is confirmed by the concomitant restrictive language in the definition of "action", in pertinent part, as:

"All activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas" (Emphasis added.) 50 C.F.R. § 402.02.

15

2 Agency construction of the Act was clearly expressed in the 1986 rulemaking.

15: Comment noted

Ms. Jayne Harkins  
September 8, 2006  
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cont'd

One need look no further than the FWS explanation in its 1986 rulemaking for clear intent that the ESA's operative provisions are not to be applied extraterritorially.

"The 1978 rule extended the scope of section 7 beyond the territorial limits of the United States to the high seas and foreign countries. The proposed rule cut back the scope of section 7 to the United States, its territorial sea, and the outer continental shelf, because of the apparent domestic orientation of the consultation and exemption processes resulting from the Amendments, and because of the potential for interference with the sovereignty of foreign nations. Several commenters asserted that the rules should continue to have extraterritorial effect. The scope of these regulations has been enlarged to cover Federal actions on the high seas but has not been expanded to include foreign countries." 51 Fed.Reg. 19929-19930 (1986)

The FWS has interpreted Congressional amendments to the ESA for over a decade as evincing an intent for domestic application. The FWS is bound by its own longstanding administrative interpretation and so is Reclamation.

E Using an analysis of extraterritorial impacts effectively applies § 7(a)(2) extraterritorially, which is unlawful.

16 Comment noted

16

Because Section 7(a)(2) does not demonstrate any, much less clear, Congressional intent concerning their foreign application, under the presumption against application of statutes, Section 7(a)(2) must be confined to application within the United States. Inserting the ESA analysis in the DEIS, Subsection 3.16 e, coupled with consultation with IBWC, Subsection 3.16 f, constitutes preparation of a de facto Biological Assessment under the ESA. Thus, this analysis of extraterritorial impacts is an impermissible application of the ESA.

f Sound public policy demands that ESA application remain focused on impacts in the United States where, as here, a treaty covers the area in question.

17: Comment noted. Reclamation acknowledges there are various sound public policy perspectives on this issue. Reclamation has appropriately focused on its ESA compliance within the United States.

17

There are six oft-cited reasons for the presumption against extraterritorial application: (1) The presumption provides legislators with a clear background rule which allows them to predict the application of their statutes; (2) "the commonsense notion that Congress generally legislates with domestic concerns in mind" (Smith, 507 U.S. 197, 204 (1993)); (3) Separation-of-powers concerns (i.e., the determination of whether and how to apply federal legislation to conduct abroad raises difficult and sensitive policy questions that tend to fall outside both the

Ms. Jayne Perkins  
September 9, 2000  
Page 11

cont'd

institutional competence and constitutional prerogatives of the judiciary); (4) international law limitations on extraterritoriality, which Congress should have been assumed to observe; (5) consistency with domestic conflict-of-laws rules; and (6) the need to protect against unintended clashes between our laws and those of other nations which could result in international discord. See, Dodge, "Understanding the Presumption Against Extraterritoriality," 16 Mark. J. Int'l Law 85 (1998).

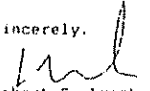
1 Treaty relations and relationships will be impacted even if water deliveries are not. (See I C 1, supra.)

2 Hydrologic impact would most likely result if extraterritorial impacts colored the decision.

It is difficult to imagine how a decision-maker, let alone the preparers of the EIS, will not be influenced by impact analysis in the Mexican Delta. Even if water deliveries are not impacted, some hydrologic, water quality or other changes will result from merely weighing the information. To think otherwise is to defy common sense. Treaty relations will be affected. Section 3.16 should be deleted from the FEIS.

Thank you for the opportunity to comment on this important proposal.

Sincerely,

  
Robert S. Lynch  
Asst. Secretary/Treasurer

RSL:psr

cc: Hon. Jane Dee Hull, Governor of Arizona  
Arizona Congressional Delegation  
ICBA Board of Directors  
John Leshy, Solicitor, Department of the Interior  
Rita Pearson, Director, Arizona Department of Water Resources  
Gerald Zimmerman, Executive Director, Colorado River Board of California  
George H. Caan, Director, Colorado River Commission of Nevada  
Wayne Cook, Executive Director, Upper Colorado River Commission

## COMMENT LETTER

Ms. Jayne Harkins  
September 8, 2000  
Page 12

Harold Simpson, Colorado State Engineer  
Larry Anderson, Director, Utah Division of Water Resources  
Philip Mutz, New Mexico Interstate Stream Commission  
John Shields, Wyoming State Engineer's Office  
Douglas Miller, General Counsel, CAWCD  
Douglas Fant, Counsel, APA  
Leslie James, Executive Director, CREDA  
Larry Dozier, Deputy General Manager, CAWCD

SEP 8 2000 3:30PM MWD

NO 236 P 2



MWD

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

September 8, 2000

Mr. Robert W. Johnson  
Regional Director  
Lower Colorado Region  
c/o Ms. Jayne Harkins, BC00-4600  
U.S. Bureau of Reclamation  
P.O. Box 61470  
Bozler City, Nevada 89006-1470

VIA FACSIMILE

Dear Mr. Johnson:

Comments on Colorado River Interim Surplus Criteria Draft Environmental Impact Statement

The Metropolitan Water District of Southern California (Metropolitan) appreciates the opportunity provided by the U.S. Bureau of Reclamation (Reclamation) to comment on the Colorado River Interim Surplus Criteria Draft Environmental Impact Statement (DEIS). Metropolitan has reviewed the DEIS in conjunction with the information submitted on the DEIS which was published in the Federal Register on August 8, 2000 on pages 48531 to 48538 (Information), and the August 14, 2000 memorandum making available Attachment I for the DEIS.

Metropolitan notes that Reclamation has made a preliminary review of information submitted on the DEIS, entitled, "Interim Surplus Guidelines—Working Draft", which is the product of significant effort on the part of the representatives of the Governors of the Colorado River Basin States and has made a preliminary determination that such criteria are within the range of alternatives and impacts analyzed in the DEIS. Metropolitan encourages Reclamation to complete the final evaluation of the information, and supports the presentation of the results of that final evaluation in the Final Environmental Impact Statement (FEIS). Metropolitan supports the designation of the "Interim Surplus Guidelines—Working Draft" as the preferred alternative in the FEIS.

One of the comments made at the August 24 public hearing in Phoenix, Arizona indicated that Reclamation had ample authority to participate in a dialogue on the "Interim Surplus Guidelines—Working Draft" during the remainder of the NEPA process. As a potentially affected public agency, Metropolitan requests the opportunity to be invited to participate in any such dialogue.

1: The preferred alternative in this FEIS is derived from the Seven States Proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with Reclamation policy and operational procedures.

2: Reclamation appreciates the willingness of state and local agency representatives to participate in a dialogue on the interim surplus criteria during the NEPA process. This has been of assistance in compiling water demand projections and other operational aspects for the analysis.



SEP 10 2000 3:35PM PMD

10 236 P 3

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

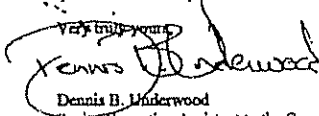
c. Robert W. Johnson, Regional Director

Page 2

September 8, 2000

Enclosed for your consideration are additional comments on the DEIS. Should you have any questions on Metropolitan's comments, I may be reached at (213) 217-6588.

Very truly yours,



Dennis B. Underwood  
Senior Executive Assistant to the General Manager

JPM:mmm

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Enclosure

## COMMENT LETTER

SEP 8 2008 3:39PM M10

FO 236 P 4

Additional Comments on  
Colorado River Interim Surplus Criteria Draft Environmental Impact Statement

The following comments are offered for consideration by the Bureau of Reclamation (Reclamation) for inclusion in the Final Environmental Impact Statement:

- |   |    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |    |                                                                                                                                                                                                                                                                                                                                                                                            |
|---|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3 | 1. | Insert the word "normal" before the word "apportionment" as California has not been diverting more than its normal and surplus apportionment combined. (Page 1-3, paragraph 4, line 1)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 3: | Comment noted. the change has been made                                                                                                                                                                                                                                                                                                                                                    |
| 4 | 2. | Insert the phrase "beneficial consumptive use of" before the word "water" as Article III of the Colorado River Compact apportioned the beneficial consumptive use of water between the Upper and Lower basins. (Page 1-8, point 1, line 1)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 4: | The suggested edit was included in the FEIS                                                                                                                                                                                                                                                                                                                                                |
| 5 | 3  | Insert the phrase "authorized the Lower Division states to enter into an agreement apportioning the", and delete the word "apportioned" before the word "water" to more precisely state what was authorized by the Boulder Canyon Project Act. After the word "water" delete the phrase "among the Lower Division States" (Page 1-8, point 2, lines 2-3)                                                                                                                                                                                                                                                                                                                                                                                                                           | 5: | The suggested edit was included in the FEIS                                                                                                                                                                                                                                                                                                                                                |
| 6 | 4  | Insert the word "Protection" after the word "Floodway" to more precisely reference the short title of Public Law 99-450, the Colorado River Floodway Protection Act. (Page 1-20, paragraph 5, line 1) Insert the phrase "from below Davis Dam to the Southerly International Boundary between the United States and Mexico" following the word "greater" to specify the location of the floodway. (Page 1-20, paragraph 5, line 3)                                                                                                                                                                                                                                                                                                                                                 | 6: | Your comment is noted. This paragraph has been deleted. Section 3 6 4 1 has more information regarding Public Law 99-450                                                                                                                                                                                                                                                                   |
| 7 | 5. | Delete the sentence "The Colorado River Floodway Act requires that the minimum flood release from Hoover Dam can be no less than 40,000 cfs" as Metropolitan's review of Public Law 99-450 did not reveal this requirement. (Page 1-20, paragraph 5, lines 3-5)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 7: | Your comment is noted. This paragraph has been deleted                                                                                                                                                                                                                                                                                                                                     |
| 8 | 6. | Is the Lower Basin apportionment referenced, the Lower Basin normal apportionment or the Lower Basin normal and surplus apportionment? (Page 1-20, paragraph 1, line 5)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 8: | Reclamation assumes this comment is referring to page 1-22, paragraph 1 line 5 of the DEIS. The sentence has been changed                                                                                                                                                                                                                                                                  |
| 9 | 7  | It is stated that "Elevation 1083 feet msl is the minimum water level for power generation at the Hoover Powerplant based on its existing turbine configuration." (Page 3-3-10, Section 3 3 3 4, lines 6-8) In Reclamation, River Operations Team, Boulder City, Nevada's, "CRSSEZ Annual Colorado River System Simulation Model, Overview and Users Manual", Revised May 1998, it is stated that "If mavelev is less than 1050 feet then Hoover energy is zero." where mavelev is Mean average elevation for the year. (Page 13, paragraph 5, lines 8-9) In the Draft Environmental Impact Statement (DEIS), it is stated "The minimum water surface elevation for efficient power generation is 1083 feet" (Page 3 3-23, paragraph 1, lines 4-5) Please clarify whether the word | 9: | The fifth sentence of the first paragraph in Section 3 3 3 4 has been changed to read as follows: "Elevation 1083 feet msl is the minimum water level for effective power generation at the Hoover Powerplant based on its existing turbine configuration." A quantitative definition for "effective" as it is used in connection with power generation has been added to Section 3 10 2 1 |

-1-

SEP 0 2000 3:10PM HLD

10 236 P 5

cont'd

"efficient" should be inserted before "generation" in the sentence quoted above which is on Page 3.3-10. Please provide a quantitative definition for "efficient" as it is used in connection with generation on pages 3.3-10, 3.3-23, and Figure 3.3-10.

10

8. Insert the phrase "the Yuma Project," before the phrase "the IID" as the All American Canal delivers water to the Yuma Project as well as IID and CVWD according to <http://dataweb.usbr.gov/btmi/allamcanal.html#general> (Page 3.4-6, paragraph 4, line 8)

10: The suggested edit was made

11

9. Revise the phrase "Since 1996" to "In 1996 and 1997"; and insert the phrase "normal apportionment" and delete the word "entitlement" before the phrase "due to determinations by the Secretary" to be more precise. Reclamation's annual report entitled, "Compilation of Records in Accordance With Article V of the Decree of the Supreme Court of the United States in Arizona v. California Dated March 9, 1964" indicates that California's net diversions of Colorado River water totaled about 100,000 to 200,000 acre-feet less in 1998 and 1999 than that indicated in the DEIS. (Page 3.4-7, paragraph 1, line 3)

11: The last sentence of the fifth paragraph in Section 3.4.3.3 has been changed to read as follows - Since 1996, California has received as much as 800,000 af above its annual 4.4 maf normal apportionment due to determinations by the Secretary of surplus conditions on the Colorado River through the AOP process

12

10. Insert the word "normal" before the word "apportionment" to be more precise. (Page 3.4-7, paragraph 3, line 1)

12: The suggested edit was made

13

11. Revise the word "entitlement" to the phrase "normal apportionment" to be more precise. (Page 3.4-7, paragraph 3, line 3).

13: The suggested edit was made

14

12. The DEIS includes the phrase "for about 700,000 acre-feet of the approximate 2 million af of water that MWD currently delivers." (Page 3.4-7, paragraph 3, lines 6-7) In calendar year 2000 with the initial filling of Diamond Valley Lake, Metropolitan forecasts total deliveries of 2.7 million acre-feet to its service area, the Hayfield groundwater basin, and to Desert Water Agency and Coachella Valley Water District for recharge of the Upper Coachella groundwater basin under agreements with those two agencies, with 1.4 million acre-feet of the total being deliveries from the State Water Project. Over the calendar year period 1990-99, Metropolitan delivered between 1.5 and 2.6 million acre-feet.

14: The last part of the last sentence of the seventh paragraph in Section 3.4.3.3 has been revised to reflect the information provided

15

13. Revise the word "legal" to the word "normal" to be more precise. (Page 3.4-8, paragraph 2, line 2)

15: The suggested edit was made

16

14. Revise the number "5.3" to "5.2". (Page 3.4-8, paragraph 3, line 2) Reclamation's annual report entitled, "Compilation of Records in Accordance With Article V of the Decree of the Supreme Court of the United States in Arizona v. California Dated March 9, 1964" indicates that California's net diversions have not reached 5.3 million acre-feet in the last 10 years after accounting for unmeasured return flows.

16: The suggested change was made

17

15. Insert the phrase "those in place by" before the number "2015" (Page 3.5-7, paragraph 2, line 3) as the sixth paragraph on this page includes this language

17: The referenced paragraph has been removed from the document

SEP 0 2000 3:41PM MWD

NO 236 P 6

- 18: 16 Considering the data presented in Table 3.5-7, revise the word "almost" to "about" and revise the phrase "California Alternatives" to "Alternative" (Page 3.5-24, paragraph 4, lines 4-5)
- 17: 17 Revise the sentences, "The Tribe maintains a claim to additional lands and reserved water rights in California, which will likely be settled soon recognizing the Tribe's right to additional reserved water rights from the Colorado River in the amount of 3,022 acre-feet. The Tribe and State of California have agreed upon a settlement of that claim which is presently before the US Supreme Court for settlement." to "In its June 19, 2000 Opinion, the US Supreme Court accepted the Special Master's uncontested recommendation and approved the proposed settlement of the dispute respecting the Fort Mojave Indian Reservation. Under the settlement the Tribe is awarded the lesser of an additional 3,022 acre-feet of water or enough water to supply the needs of 468 acres." (Page 3.14-7, paragraph 3, lines 18-23) Revise the phrase, "The attached tables incorporate the proposed" to "The above tables incorporate the". (Page 3.14-7, paragraph 3, line 23)
- 20: 18 In Table 3.14-1, in row 11 labeled "M&I Priority" please review the phrase "(should be 18,135)" with the values "18,145" in the columns "Likely Future without GRIC" and "With GRIC Settlement" for that row. In row 12 labeled "Indian Allocation (AkChin)(minus losses)" please review the "1" found in the "With GRIC Settlement" column. (Page 3.14-12)
- 21: 19 In Table 3.14-2 in the row labeled "Colorado River - Yuma Mesa and Wellton Mohawk", the columns from left to right "Likely Future without GRIC", "Total Water", and "With GRIC Settlement" show the value of "68,400". However, the next column to the right, "Total Water" shows a value of "64,800". It appears that this value should be "68,400" as it is the 68,400 value which when added to the second row value of "801,574" in the "With GRIC Settlement" column sums to "869,974" in the column to the right labeled "Total Water" in the second row. Should "UAGRID" in the fifth row label be "CAGRD", the acronym for the Central Arizona Groundwater Replenishment District? (Page 3.14-2)
- 22: 20 It is stated that "At that elevation Lake Mead has a nominal 'live capacity' of 27,377,000 acre-feet and an active capacity of 17,353,000 acre-feet above elevation 1083 feet msl, the minimum elevation for power generation." (Attachment A, page 1, paragraph 3, line 8) It is also stated that "The minimum water surface elevation for efficient power generation is 1083 feet." (Page 3.3-23, paragraph 1, lines 4-5) Please clarify whether the word "efficient" should be inserted before "generation" in the sentence quoted above in Attachment A
- 23: 21 Revise the word "Protection" to "Policy". (Attachment H, Six States Alternative, page 2, paragraph 5, line 2) The same comment applies for the California Alternative, and the Shortage Protection Alternative

-3-

18: Comment noted. This section has been revised to incorporate information resulting from modeling conducted for the FEIS

19: We agree the second subparagraph under paragraph 3.14.2.6 needs to be revised to recognize the Supreme Court's recent opinion. However, in revising the paragraph, we relied primarily on the suggested rewording from the Ten Tribes Partnership. See response comment 53-14

20: In Table 3.14-1, San Carlos Apache M&I Priority, 18,145 acre-feet per year is listed as the M&I allocation under both the future with the GRIC settlement and the future without the GRIC settlement. This volume of water is based on the CAP Simulation Study and the draft EIS for the CAP Reallocation, dated June 2000. A note is provided in Table 3.14-1 stating that 18,135 AF per year is the volume of water which should be listed because that volume was allocated in the legislation. A footnote was written in the FEIS to explain the two numbers. The "1" in Table 3.14-1, San Carlos Apache Indian Reallocation (Ak Chin) (minus losses), will be corrected to read "30,800"

21: The quantity and acronym have been corrected

22: The sentence referred to is in Attachment C of the FEIS. It has been modified as suggested

23: The correction will be made

## COMMENT LETTER

SEP 18 2000 3:41PM P40

10 235 P 7

- 24 | 22 Revise "August-July" to "July-July" (Attachment I, Draft: Last Revision, August 28, 2000, page I-11, first table, row 7)
- 25 | 23 Please expand Table 6, "Hoover Dam Elevation and Output", Attachment N, to include elevations 1083 and 1050 feet.

24: This correction has been made

25: Median reservoir elevations, which were used for the power analysis, remain above 1083 feet throughout the period of analysis. Therefore elevations 1083 and 1050 feet were not included in the table

## COMMENT LETTER

09/11/2000 18:12 5285005430

LIC PD CIV ATTY

PAGE 01

MOHAVE COUNTY WATER AUTHORITY  
P.O. BOX 2419  
BULLHEAD CITY, AZ 86430

FAX TRANSMITTAL LETTER  
FAX NO. (520) 680-5430

DATE: September 11, 2000  
NO. OF PAGES: 3 (INCLUDING TRANSMITTAL LETTER)

TO: Jayne Harkins  
Bureau of Reclamation  
FAX NO: (702) 293-8042

FROM: Maureen George  
DEPT: OFFICE OF THE CITY ATTORNEY  
TELEPHONE: (520) 453-4144

URGENT

SUBJECT: Comments on Draft EIS - Colorado River Interim Surplus Criteria

COMMENTS/INSTRUCTIONS: To follow is a REVISED letter to that of the one faxed to you on Friday, September 8. Please replace page 2 of the September 8 letter with the REVISED page two attached hereto. Thank you for your assistance.

CAUTION PLEASE FORWARD DOCUMENTS TO ADDRESSEE IMMEDIATELY UPON RECEIPT. THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS CONFIDENTIAL AND INTENDED SOLELY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, COPYING OR UNAUTHORIZED USE OF THIS COMMUNICATION IS STRICTLY PROHIBITED.

## COMMENT LETTER

09/11/2000 10:12 5206885438

LIC PD CIV CITY

PAGE 02

MOHAVE COUNTY WATER AUTHORITY  
P.O. BOX 2419  
BULLHEAD CITY, AZ 86430  
(520) 754-2555  
(520) 754-4622 (fax)

September 11, 2000

VIA FACSIMILE AND U.S. MAIL  
(702) 293-8042

Regional Director  
Lower Colorado Region  
Attn: Jayne Harkins (LC-4600)  
Bureau of Reclamation  
P.O. Box 61470  
Boulder City, NV 89006-1470

RE: Comments on the Draft Environmental Impact Statement (EIS) regarding Colorado River Interim Surplus Criteria, Colorado River Basin

Set forth below are the comments of the Mohave County Water Authority on the Draft EIS dated July 7, 2000, in regard to proposed Colorado River interim surplus criteria.

1. The Draft EIS fails to address in any meaningful way the increase in the relative risk of shortage to Arizona users, particularly broken down by category of user. This is a glaring omission of key information necessary for water users in Arizona to make a determination as to the impact of the interim surplus criteria.
2. The report fails to address the unresolved issue of the relative priority among fourth priority users in Arizona. Again, a key factor necessary for those holders of fourth priority rights in Arizona to make a determination as to the impact of the interim surplus criteria.
3. The EIS does not address the impact on existing contractors for fifth and sixth priority water. The Decree provides that Arizona is entitled to 46% of the water available in the surplus year. Either we are or are not in a surplus condition and, if we are, then those holders of surplus contracts, up to 46% in Arizona, are entitled to take such water on the basis provided in the Decree.
4. The EIS fails to address the fact that Arizona's apportioned but "unused" water may only be available because the Arizona Water Bank, pursuant to these interim guidelines and agreements with other states would, to the detriment of Arizona water users, agree to forebear taking water that would otherwise be banked in favor of CAP and other fourth priority users.
5. The report fails to address in any detail the reasoning behind Arizona going to 2.3 in years of shortage versus California taking its full priority. A related issue is the provision that a consequence of not complying with the cut back in usage to 4.4 million a/f (although the numbers would appear to be 4.8 million a/f) MWD shall be reduced to a maximum of 200,000 a/f per year even though they may have diverted millions of acre feet.

1: See responses to Comment 53-16 and 14-11 for discussions of depletion schedules and Arizona shortages

2: See responses to Comment 53-16 and 14-11 for discussions of depletion schedules and Arizona shortages

3: See responses to Comment 53-16 and 14-11 for discussions of depletion schedules and Arizona shortages

4: As stated in Chapter 2 of the FEIS, the Secretary will continue to apportion water consistent with the applicable provisions of the Decree. The Secretary will also honor forbearance arrangements made by various parties for the delivery of surplus water or reparations for future shortages.

5: As described in Section 3.3.3.4, the magnitude of the shortage to CAP was strictly a modeling assumption. The Colorado River Basin Project Act provided California with a 4.4 maf priority over CAP diversions.

## COMMENT LETTER

09/11/2000 10:12 5706005430

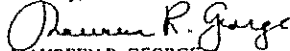
LHC CD CITY ATTY

PAGE 03

Comments on the Draft Environmental Impact Statement (EIS) regarding Colorado River Interim Surplus Criteria, Colorado River Basin  
Page Two

- 6 The only acceptable reparation is wet water, available in the shortage year when needed, up to the amount that would have been available but for any water diverted by California as a result of these interim guidelines
- 7 The proposed interim guidelines provide for no reparation to Arizona for continued use of water beyond its allocation when such water will only be "available" if Arizona either declines to take its apportionment in order to assist California or, in the alternative, declines to take the surplus to which it is entitled. We are concerned that either of these actions would be a detriment to water users in Arizona, particularly those outside the CAP.
- 8 The report fails to address in any detail the practical bottom line, i.e., water use is going to continue to increase astronomically at the rate California is growing. There is little or no probability that water use will actually decrease to the 4.4 number without significant enforceable sanctions which certainly are not present in the proposed interim guidelines
- 9 The report seems to indicate while there may be an increase in demand on the Colorado River, for example in Mohave and Yuma counties, such demand is many years out. This is not true. The Arizona Water Bank's recent study indicated Lake Havasu City, for example, will run out of water prior to the proposed expiration of these interim surplus guidelines. The Draft EIS makes no effort whatsoever to address the concerns of fourth priority mainstream river users as opposed to those in CAP.
- 10 The report states the Bank's primary purpose is to firm CAP supplies. This is not true. It has an equal obligation to firm the supplies of river communities. Our concern is that obligation would not be met if these interim surplus criteria are adopted.
- 11 The Draft EIS fails to take into consideration the cumulative impact on Colorado River main stem users in Arizona of the proposed interim surplus criteria, the other provisions of California's 4.4 Plan, the policy of Reclamation regarding the use of effluent on the river and the proposed reallocation of the CAP project water supply in conjunction with settlements of CAP and Indian water rights disputes.
- 12 Absent more information on the relative priorities among fourth priority users in Arizona, and the relative increased risk of shortage over time to the various classes of users in Arizona, the Mohave County Water Authority must object to any but the no action alternative.

Sincerely,



MAUREEN R. GEORGE

Secretary-Treasurer

Mohave County Water Authority

cc: Mohave County Water Authority Board of Directors  
Lake Havasu City Mayor and City Council  
Bruce Williams, City Manager

6: See response to Comment 56-32 regarding reparations

7: See response to Comment 56-32 regarding reparations

8: See response to Comment 33-3

9: See response to Comment 53-16 for a discussion of depletion schedules

10: Comment noted. The evaluation of Arizona's groundwater banking programs is outside the scope of this project.

11: No cumulative impacts have been identified for the issues raised in this comment. Note that potential effects on water users in Arizona are identified in Section 3.4 of the EIS.

12: We have modified the reference to reductions in times of shortage in the third paragraph on page 3.4-15, to recognize that in Arizona a reduction in the amount of Colorado River water available to fourth priority users would be shared pro rata among CAP and non-CAP entitlement holders.



HC 69 Box 127 - Randell Utah 84063-0192  
Phone 435-823-7709 - Fax 435-545-7710

To Ms Jayne Harkins

As President of Ouray Park Irrigation Company which controls the water to approximately 12,000 acres in northeastern Utah, I would like to show support for the 7 Upper Colorado Basin states proposal. I would also like to encourage the Secretary of Interior to adopt this proposal as the preferred alternative in the final environmental assessment.

Thank you.

Shane Frost  
Ouray Park Irrigation Co President  
HC 69 Box 127  
Randlett, Utah 84063

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1: The preferred alternative in this FEIS is derived from the Seven States Proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need of the proposed action. Reclamation policy and operational procedures

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09/07/00  
4600

September 8, 2000  
VIA fax and US mail

Ms Jayne Harkins  
Bureau of Reclamation  
Attn: BCOO - 4600  
PO Box 61470  
Boulder City NV 89006-1470  
(fax: 702-293-8042)


RE: COMMENTS ON DRAFT EIS ON COLORADO RIVER INTERIM SURPLUS  
CRITERIA

Dear Ms. Harkins:

Salt River Project (SRP) is an agricultural improvement district in the state of Arizona and through its electric utility operation serves over 750,000 electric utility customers. SRP purchases power produced by the Colorado River Storage Project (CRSP), Parker-Davis Project and the Boulder Canyon Project, and thereby has a direct and specific interest in the operation of the generation in the Colorado River and the draft EIS on Colorado River Interim Surplus Criteria.

- 1 | SRP supports the comments submitted by the Colorado River Energy Distributors Assn (CREDA) (attached).

Sincerely,

  
John Coggins  
Manager, Supply & Trading

Cc: Leslie James CREDA

- 1: Support of comments submitted by Colorado River Energy Distributors Association - comment noted



**San Diego County Water Authority**

3711 Fifth Avenue • San Diego, California 92103-5718 SEP 20 2000  
(619) 682 4100 FAX (619) 297 0511

September 8, 2000

Regional Director Lower Colorado Region  
c/o Jayne Harkins ( LC-4600)  
Bureau of Reclamation  
P O. Box 61470  
Boulder City NV 89006-1470

Dear Ms Harkins

This letter presents the Authority's comments on the Bureau of Reclamation's July 2000 Colorado River Interim Surplus Criteria Draft Environmental Impact Statement (DEIS). Surplus criteria are linked to other key elements of California's Colorado River Water Use Plan, including the Authority's core water transfer with the Imperial Irrigation District and the quantification of California's priority system for Colorado River water users. The implementation of appropriate surplus criteria is thus necessary to enable other critical programs for reducing California's demand on Colorado River water supplies above the state's basic apportionment.

1: Comment noted

The Authority supports and urges the Bureau to adopt and implement the surplus criteria guidelines proposed and presented by all seven Colorado River Basin states to the Department of Interior on July 27, 2000. The guidelines which were published by the DOI as supplemental information to the DEIS, were the product of intensive review and study by all seven states over a period of several years. All seven states are in agreement that the guidelines will produce the interim surplus water needed by California without creating unmitigated risk to Arizona or other lower division water users.

Because the surplus criteria are linked to other California Plan elements, it is essential that all elements move forward in a coordinated fashion. The seven state's proposal, for example, makes surplus guidelines effective only after the quantification settlement agreement becomes effective. Surplus guidelines are also a required condition for the Authority's water exchange agreement with the Metropolitan Water District, which is needed to transport up to 200,000 acre-ft of conserved agricultural water from the Imperial Valley to the Authority for future urban use. California's agencies have obligations to develop programs that offset demand for Colorado River water by specific dates. The guidelines contain benchmarks to ensure that California makes progress on developing the programs needed to reduce demand. If sufficient progress is not made, the surplus guidelines are subject to termination.

2 cont'd  
below

Potential impacts from use of the seven states' surplus guidelines fall within the range of alternatives analysis contained in the DEIS. We believe no important parameter studied in Chapter 3 of the DEIS, Affected Environment and Environmental Consequences would be outside the range of alternatives already reviewed. Computer modeling by the seven states has shown that impacts on reservoir system operation, reservoir elevations

2: Reclamation concurs with the position expressed in this comment with respect to the Basin State alternative included in this FEIS

### MAJOR AGENCIES

<p><b>CRÉDIT</b></p> <p>Ind. Man. 100 000 000          Ind. Agric. 100 000 000          Ind. Commer. 100 000 000</p> <p><b>ÉQUIPE</b></p> <p>Ind. Man. 100 000 000          Ind. Agric. 100 000 000          Ind. Commer. 100 000 000</p>	<p><b>INDUSTRIE MANUFACTURIÈRE</b></p> <p>Ind. Man. 100 000 000          Ind. Agric. 100 000 000          Ind. Commer. 100 000 000</p> <p><b>INDUSTRIE AGRICOLE</b></p> <p>Ind. Man. 100 000 000          Ind. Agric. 100 000 000          Ind. Commer. 100 000 000</p>	<p><b>INDUSTRIE COMMERCIALE</b></p> <p>Ind. Man. 100 000 000          Ind. Agric. 100 000 000          Ind. Commer. 100 000 000</p> <p><b>INDUSTRIE MANUFACTURIÈRE</b></p> <p>Ind. Man. 100 000 000          Ind. Agric. 100 000 000          Ind. Commer. 100 000 000</p>	<p><b>INDUSTRIE MANUFACTURIÈRE</b></p> <p>Ind. Man. 100 000 000          Ind. Agric. 100 000 000          Ind. Commer. 100 000 000</p> <p><b>INDUSTRIE AGRICOLE</b></p> <p>Ind. Man. 100 000 000          Ind. Agric. 100 000 000          Ind. Commer. 100 000 000</p>
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Ms. Jayne Harkins  
SDCWA  
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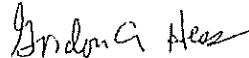
and water supplies would likely fall in a bandwidth between modeling results from the "California" and "Six States" alternatives reviewed by the DEIS. The same result holds true for the remaining factors reviewed in this chapter, such as riverflow issues, aquatic resources, special-status species, recreation, and energy resources.

3

The DEIS specifically requested comments regarding appropriate baseline criteria. While a case might be made for utilizing either the "75R" or "70R" strategy for baseline conditions, to in effect recreate recent Annual Operating Plan history, we feel the differences between the two strategies are too slight to be of any consequence for the comparison of surplus criteria alternatives. The choice is even less consequential after considering that the Secretary currently enjoys discretion to declare surplus based upon varying year-to-year water conditions, as noted in the DEIS. Neither strategy is fully capable of mimicking the recent history of surplus declarations. It should be noted that the seven states' surplus guidelines proposes using the "70R" strategy, both as a specified level of surplus during the interim period and as the basis for surplus determinations after the interim period.

We appreciate the work the Bureau has done preparing the DEIS. Should you have any questions regarding the Authority's comments, please contact Mr. Dave Foxgerson at 619-682-4153.

Sincerely



Gordon A. Hess  
Director of Imported Water

3: Reclamation has noted the comment regarding the relative roles of 70R and 75R strategies in portraying differences among alternatives. See response to Comment 57-11 for additional information.



September 8, 2000

89001700  
4600

Mr. Robert W. Johnson  
Regional Director - Lower Colorado Region  
Attn: Jayne Harkins (LC-4600)  
Bureau of Reclamation  
P.O. Box 61170  
Boulder City, NV 89006-1470

VIA FACSIMILE  
(702) 293-8042

Comments to the Draft Environmental Impact Statement for the Colorado River Interim Surplus Criteria

Dear Mr. Johnson:

By your letter dated Jun 29, 2000, you solicited comments to the Draft Environmental Impact Statement (DEIS) that analyzes potential environmental impacts of adopting specific interim criteria under which surplus water conditions may be declared in the Lower Colorado River Basin during an interim period that would extend through 2105. The comments of the Southern California Edison Company (Edison) to the DEIS are provided below.

Edison finds that the DEIS is flawed in at least three areas: determination of base line alternative conditions; lack of mitigation measures; and understatement of environmental impacts due to reduced capacity.

Determination of Baseline Alternative Conditions

- 1 | The no action alternative and baseline conditions do not represent the consensus of the entities linked to the Lower Colorado River. The baseline alternative represents a new condition that has not been reviewed by water and power users of the Lower Colorado River system. The proposed baseline conditions are not consistent with the conditions provided by the U.S. Bureau of Reclamation (Reclamation) in the annual rate process associated with the Boulder Canyon Project. The DEIS forecasts higher energy amounts than the amounts forecast by the annual rate process for the Boulder Canyon Project. The higher energy amounts in the DEIS imply a higher lake elevation than that implied in the Boulder Canyon Project rate process.

For example, the latest rate process for the Boulder Canyon Project shows energy generation to equal 4,301,001 MWh for the period 2004 through 2017 which is equivalent to a lake surface elevation of 1,159 feet. The DEIS shows the baseline energy amount to be 4,623 MWh during the year 2017 and a lake surface elevation of 1,170 feet. The amounts in the DEIS are greater than the amount used to develop firm power rates for the Boulder Canyon Project.

The baseline seems to be defined in a way which would preclude findings of significant impact. Under the described baseline condition, water levels at Lake Powell and Lake Mead would

EDISON  
Boulder City, NV

- 1: The 70R strategy is used for the baseline in this FEIS. Reclamation has updated the surplus depletion schedules for California, Arizona and Nevada. This and other changed modeling assumptions could account for the increased energy amounts in this process. The updated schedules will be utilized in future annual rate processes. Reclamation believes the baseline used appropriately reflects future conditions.

Mr. Robert W. Johnston  
September 8, 2000

Page 2

steadily decline over the study period. The declaration of surplus water at these sites would further reduce water levels, but apparently not significantly. If the baseline were defined differently, the lowering of water levels associated with each alternative might be found to cause more significant environmental effects. It would seem more reasonable to describe the baseline as including relatively full reservoirs with water releases and energy production at current and/or historic average levels.

#### **Lack of Mitigation Measures**

- 2 | Another weakness of the DEIS is the failure to identify any mitigation measures. It might be argued that the failure to find significant environmental impacts precludes the need to identify mitigation measures. However, if the comparison to a more reasonable baseline were made, the impacts might be found to be of greater significance, thus requiring mitigation.

Reclamation should consult with the water and power entities of the lower Colorado River system to identify the baseline conditions for all users of the lower Colorado River system.

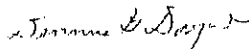
#### **Environmental Impacts of Reduced Capacity**

- 3 | The DEIS trivializes the impact of replacing capacity and generation lost as a result of a lowering elevation of Lake Mead. The load following capability of Hoover is one of the best in the west. Hoover can change operating levels at a rate at least ten times faster than present fossil fueled generation plants. Each MW of reduction would have to be replaced by at least ten MW of conventional fossil generation. Carried to the extreme, Hoover is equivalent to about 20,000 MW of load following capability from fossil fueled generation. Since no large hydroelectric generation sites are planned for construction in the WSCC, the amount of lost load following capability will come from other resources including fossil fueled generation with attendant environmental consequences.

The DEIS should be expanded to assess the amount of capacity that would have to be replaced to supply load following capability and the environmental impact of the replacement capacity.

Thank you for giving Edison an opportunity to provide comments.

Sincerely,



2: Comment noted. Although no impacts were identified that required mitigation, the FEIS includes a discussion of environmental commitments in Section 3.17. Note also that the baseline used in the FEIS (a 70R operating strategy) has been modified from that presented in the DEIS (a 75R operating strategy).

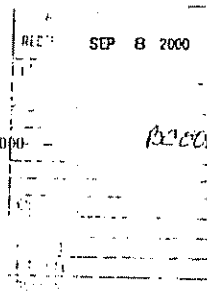
3: As discussed in Section 3.10.2.2 of the FEIS, Reclamation recognizes that the load-following capability of Hoover is important. The differences in the amount of capacity available for load-following between the baseline strategy and the alternatives is identified in the EIS.



SOUTHERN NEVADA  
WATER AUTHORITY

Ms. Jayne Harkins  
Attn: BCOO-4600  
Bureau of Reclamation  
P.O. Box 61470  
Boulder City, NV 89006-1470

September 6, 2000



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Las Vegas, Nevada 89134  
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Fax (702) 258-3058

Project Office  
1700 E. Flamingo Ave., 110  
Las Vegas, Nevada 89119  
Telephone (702) 862-3400  
Fax (702) 862-3470

Southern Nevada Water System  
243 Lakeshore Road  
Boulder City, NV 89003  
Telephone (702) 564-7677  
Fax (702) 564-7272

Dear Ms. Harkins:

**SUBJECT: COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT  
FOR THE COLORADO RIVER INTERIM SURPLUS CRITERIA**

In July 2000, the Bureau of Reclamation (Reclamation) issued a Draft Environmental Impact Statement (DEIS) on the Colorado River Interim Surplus Criteria. The Southern Nevada Water Authority (Authority) would like to take this opportunity to provide comments. The Authority represents the major water and wastewater purveyors in southern Nevada, including the Las Vegas Valley Water District, the Cities of Boulder City, Henderson, Las Vegas, and North Las Vegas, the Clark County Sanitation District, and the Big Bend Water District in Laughlin. These agencies serve over 1.3 million people in the southern Nevada region. The Authority and its members control over 90% of the State of Nevada's 100,000 acre-foot consumptive right from the Colorado River.

The Authority supports Reclamation's proposal to establish interim surplus criteria on the Lower Colorado River. The criteria are intended to provide direction during an interim 15-year period for the annual determination by the Secretary of the Interior of normal, surplus, and shortage conditions in the Lower Colorado River Basin. They will facilitate efforts by the State of California to reduce its use of Colorado River water down to its 4.4-million acre-foot basic apportionment. They will also afford other Lower Division states, who have contracted for surplus water, a greater degree of predictability about its annual availability.

Specifically, the Authority supports the proposal submitted by the seven Colorado River basin States (Seven Basin States proposal) for the interim surplus guidelines. In the past year, the seven basin states have spent substantial time and effort and have made significant progress in their negotiations on interim surplus, which have culminated in a set of interim surplus guidelines agreed to by each state. These guidelines were presented to Reclamation by the seven states and Reclamation issued them to the public in a Federal Register notice on August 8, 2000.

1: The preferred alternative in this FEIS is derived from the Draft Seven States Proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need of the proposed action, Reclamation policy and operational procedures.

1 cont'd  
below

Mary J. Kincaid, Chair  
County Commissioner

Sharr Burk  
North Las Vegas Commissioner

Lance Malone  
County Commissioner

Michael McDonald  
Las Vegas Commissioner

Patricia Mubey  
General Manager

#### BOARD OF DIRECTORS

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Bryan Hix  
Boulder City Commissioner

Mylene Williams  
County Commissioner

Ms Jayne Harkins  
COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT  
September 6, 2000  
Page 2

1  
cont'd

The modeling approach used to perform the impact analysis and review of alternatives in the DEIS is legitimate, impartial, and best simulates the Colorado River system. Potential environmental impacts are minimal and interim in nature and the Colorado River system would revert to baseline conditions after the expiration of the 15 year interim period.

Based upon our analysis, the Seven Basin States proposal is within the range of alternatives and impacts analyzed in the DEIS. Reclamation's National Environmental Policy Act guidance allows new or modified alternatives that do not have any significant differences in environmental impacts to alternatives analyzed in the DEIS to be fully incorporated into the Final EIS. The Seven Basin States proposal does not change the results relative to potential impacts in the DEIS. The Authority supports designation of the Seven Basin States proposal as the Preferred Alternative in the Final EIS and as the final decision in the Record of Decision.

The Authority acknowledges the leadership shown by the Department of Interior in implementing this process of developing interim surplus guidelines, and appreciates the opportunity to be involved in the process. If you have any questions about these comments, please contact David Donnelly, Deputy General Manager, at (702) 258-3107.

Sincerely,

  
Patricia Mulroy  
General Manager

PM:JM:L:sh



*Utah Water Conservancy District*

"Steinaker Dam"

78 West 3325 North  
Vernal Utah 84078  
Phone 789-1651  
Fax 789-1670

Red Fleet Dam

: 6 10

September 5, 2000

Ms Jayne Harkins  
Attention BCOO-4600  
Bureau of Reclamation  
P O Box 61470  
Boulder City, Nevada 89006-1470*Butler*

To Whom It May Concern

The following comments are made on the Proposed Colorado River Interim Surplus Criteria Draft Environmental Impact Statement

The Utah Water Conservancy District (UWCD) was organized according to the laws of the State of Utah. UWCD has direct control and management of Red Fleet Dam and Reservoir and Steinaker Dam and Reservoir which are part of the Jensen and Vernal Units of the Central Utah Project. UWCD and its water users also have diversion rights to Green River water for more than 54,000 acre-feet annually. UWCD has more than 20 water providers (companies) that serve nearly 80,000 acres of irrigated lands and provide more than 26,000 acre-feet of culinary water. In addition, UWCD water users have increased their water use efficiency to the point of reducing salinity contributed to the Colorado River System by 92,000 tons annually. Consequently, UWCD has a compelling interest in all Colorado River operational matters, but especially those matters that might impact availability of water under current entitlements for beneficial consumptive use or present water right assignments.

**Purpose and Need**

For many years, California has been diverting more than its 4,400,000 acre-feet apportionment as defined in *Arizona v California (1964)*. Prior to 1996, California drew on unused apportionments of other Lower Division States made available by the Secretary of the Interior. Since 1996, California has also drawn on surplus water made available by Secretarial determination. California is developing measures to reduce its draw on the Colorado River System through conservation, surface and underground storage, conversion of available agriculture water to M&I deficiencies, and other measures. Unfortunately, the full effect of these measures on California's draw on the Colorado River will not be seen for many years.

Colorado River surplus flow determinations have their origins in the *Criteria for Coordinated Long-Range Operations of Colorado River Reservoirs* (LROC) adopted in 1970. Article III

## COMMENT LETTER

## RESPONSES

(3)(b) of the LROC set general conditions for surplus determinations. Occasionally, the Secretary has determined that surplus conditions exist, based primarily upon avoiding mandatory flood control releases. This narrow interpretation of surplus is heavily biased toward supply. Other discussions were heavily biased toward need. These discussions have led to much controversy among the Basin States and suggest that more discrete surplus criteria should attempt to balance both need and supply considerations. Meanwhile, the need for surplus determinations by California has risen sharply because of the dramatic reduction of unused apportioned water in Arizona and Nevada.

## Upper Basin Depletion

While California is drawing far more water from the Colorado River than allocated (often as much as 800,000 acre-feet more than allocated) and Arizona and Nevada are using nearly their full allocation, the Upper Basin States have not developed their share of Colorado River water at the same pace. They have chosen a more conservative and judicial approach to Colorado River water development. The Colorado River Compact of 1922 allocated 7,500,000 acre-feet annually to the Upper Basin States in perpetuity. This means there is no schedule or time horizon to cause this allocation to expire. The Compact guarantees the delivery of the Lower Basin's allocation, so if there is a shortage, the shortage burden is on Upper Basin. The latest "Hydrologic Determination" indicates that only 6,000,000 acre-feet are available for Upper Basin development. So, for all practical purposes, the Upper Basin States have already lost 1,500,000 acre-feet from their "permanent" allocation.

UWCD believes the implementation of Interim Surplus Criteria as proposed by the Seven Basin States will not jeopardize the further development of Upper Basin entitlements. Also, the proposed criteria will not limit the water available for existing uses during the 15-year interim period.

## Conclusion

UWCD applauds the efforts of the Seven Basin States to reach agreement on guidelines for implementing Interim Surplus Criteria. This represents a "Herculean" effort by a highly diverse group of Colorado River stakeholders. It is unprecedented in scope and should cement the Record of Decision by the Secretary. UWCD encourages Reclamation and Interior to conclude the NEPA compliance process as scheduled and without interruption or delay. The existing problems with fish and wildlife habitat in the Colorado River Delta and the Salton Sea will not be aggravated by this action. If Colorado River water is to be used to solve these problems, it must come from existing entitlements. This agreement is a reasonable approach to make the transition suggested by California. The agreement provides protection to the States and treats Lake Powell and Lake Mead equally. It also provides some enforceability because of the provisions that 70R of the existing Annual Operating Plan are implemented if the agreement is not adhered to.

UWCD further believes that the consequence of no action on this issue would be protracted and costly legal challenges. Any legal action will likely transfer the decision process from water resource experts to the unpredictable legal arena that may further jeopardize Upper Basin entitlements. In light of the public comment meeting held in Salt Lake City, Utah on August 23

1: Comment noted

2: Comment noted

3: Comment noted

4: Comment noted

5: Comment noted

6: The preferred alternative in this FEIS is derived from the Seven States Proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need of the proposed action. Reclamation policy and operational procedures

cont'd | 2000 and the absence of any opposition whatsoever. UWCD strongly encourages the implementation of the Seven Basin States guidelines for Interim Surplus Criteria

7 | UWCD acknowledges that other Colorado River issues that remain unresolved. Water in satisfaction of the Mexican Treaty remains a federal obligation and the minimum objective release requirements from Glen Canyon Dam are contrary to Upper Basin interests and to UWCD interests as well. However, these issues do not detract UWCD from unqualified support of this action.

8 | Finally, UWCD recommends that Reclamation proceed with the development of the Annual Operating Plan (AOP) for Colorado River Reservoirs for 2001 without delay and without the Record of Decision on the Interim Surplus Criteria. The Seven Basin State agreement should be regarded as the basis for surplus determination for the year 2001. There are no other highly charged issues that are influenced by the AOP.

Sincerely,

  
Scott Ruppe  
General Manager

CC:

Larry Anderson, Utah Division of Water Resources

Cloyd Harrison, Uintah County Commission

Randy Crozier, General Manager, Duchesne Co. Water Conservancy District

7: Comment noted. Reclamation recognizes that the Upper Basin disagrees with the minimum objective release currently in the LROC.

8: The determination of surplus conditions for 2001 is based on the factors listed in Article III(3)(b) of the LROC. This Article allows for consideration of all relevant factors, including, but not limited to, those specifically listed in the Operating Criteria, whether or not a decision is made for the proposed interim surplus criteria.



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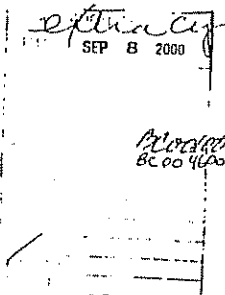
Jerry W. Raich  
John H. Henderson  
Michael D. Simonson  
Eugene J. Hendon  
Paul J. Zies  
Julie S. Erickson  
Ashley F. Edwards - Of Counsel  
George Viranesh - 1998-1997

September 7, 2000

VIA FAX AND OVERNIGHT MAIL

Ms. Jayne Harkins  
Lower Colorado Regional Office  
Bureau of Reclamation  
Attention BCOO-4600  
P.O. Box 61470  
Boulder City, Nevada 89006

United States Bureau of Reclamation  
Lower Colorado Regional Office  
P.O. Box 61470  
Boulder City, Nevada 89006



Re: Colorado River Interim Surplus Criteria Comments on DEIS for 15  
year Agreement Governing Lower Basin Water Allocations-Reference  
DES 00-25

Ladies and Gentlemen,

Enclosed please find the comments of the Union Park Water Authority to the Draft EIS ("DEIS") concerning the 15 year agreement for the proposed Colorado River Interim Surplus Criteria affecting the Lower Basin ("15 year agreement"). The Union Park Water Authority and its attorneys did not receive a copy of the DEIS until September 6, 2000, though one was requested much earlier. The short time frame allowed for comment on this important document and the underlying decision is utterly inadequate to the importance of the topic to the Lower Basin and to the State of Colorado. The Union Park Water Authority requests an additional sixty (60) days beyond September 8, 2000 to make additional comments.

The Union Park Water Authority is composed of the following members, all of which have actual or projected water service responsibilities in the area of southern and southeastern metropolitan Denver and environs: Arapahoe County, Parker Water and Sanitation District, Rangeview Metropolitan District and Arapahoe County Water and Wastewater Authority. The Denver metropolitan area and surrounding communities lie to the east of the Rocky Mountains, but, for Colorado River Compact purposes, are considered a part of the Colorado River basin when Colorado River water is used east of the continental divide. The UPWA is attempting to develop the Union Park Reservoir Project ("Union Park Project") designed to store surplus flows from the Upper Gunnison River for delivery to both the east and west slopes of Colorado. The Union Park Project is a high altitude off-river storage project. The Gunnison is a major tributary of the Colorado River, and the basin of the Gunnison River lies entirely within Colorado.

September 7, 2000  
Page 2

The Union Park Project lies approximately 35 miles above the Aspinall Unit, a series of three federal reservoirs constructed under the authority of the Colorado River Storage Project Act ("CRSPA"). The largest of these is Blue Mesa Reservoir with a storage capacity of roughly a million acre-feet. The UPWA and its predecessor, Arapahoe County, have been in litigation for 12 years to attempt to obtain water rights to store water at the proposed Union Park Reservoir for municipal uses. UPWA believes that an annual average of 110,000 to 120,000 acre feet may be diverted in each year for use on both slopes. In that litigation, the U.S. Bureau of Reclamation has now asserted the ability to utilize power generation, recreational and flood control rights at the Aspinall Unit to block new municipal appropriations in Colorado. The United States has not yet made similar assertions related to the other CRSPA units, being the Glen Canyon, Flaming Gorge or Navajo facilities, but plainly could. Since Colorado has the largest entitlement to the Upper Basin's Compact share, the inability of Colorado to develop has a major impact on the Upper Basin's ability to develop.

#### Comment Summary

1 The 15-year agreement, viewed in concert with related agreements concerning usage in California, affords major new protections to municipal and industrial use in the Lower Basin, and California in particular. The needs of the Lower Basin cannot be viewed in isolation without a concurrent commitment to protect municipal requirements in the Upper Basin, including Colorado, there is no protection for the Upper Basin. The DEIS fails to consider either the significance or the practical effect of vigorous, current federal efforts to prevent development of Upper Basin's Compact share for municipal use. The UPWA is deeply concerned that the 15-year agreement will be utilized to support the continuing efforts by the federal government to prevent additional usage of Colorado's Compact share on the Colorado front range. Without a concurrent commitment to develop water resources in the Upper Basin for actual use, the usage of surpluses generated in the Upper Basin will be permanently targeted for use in the Lower Basin for municipal and industrial use and for the protection of endangered species there and in Mexico.

The DEIS fails to discuss the federal government's assertion that its ownership of CRSPA facilities in the Upper Basin allows it to prevent the upstream development of Colorado's Compact share for municipal use. The protection of municipal and industrial uses in the Lower Basin, while actively attempting to prevent municipal use in the Upper Basin, is a threat to the long-term interests of the Upper Basin states. The interests and needs of both basins must be considered concurrently.

2 The DEIS's sensitivity analysis indicates that the threat to Lake Powell storage levels may be very great during periods of prolonged drought. The analysis contained in the DEIS appears to be founded on average flow conditions. A threat to Lake Powell storage levels is a threat to the Upper Basin states, including Colorado, and needs to be taken far more seriously.

3 The DEIS also fails to take into account the importance of groundwater banking of artificial surplus waters in the Lower Basin on Lake Powell storage levels. First, there is a question as to whether

1: The DEIS recognized that future water development will be taking place in the Upper Basin. The computer model simulations of the Colorado River used in the DEIS incorporate an Upper Division depletion schedule, developed by the Upper Colorado River Commission in 1996 in coordination with the Upper Basin States. This Upper Basin depletion schedule, as contained in Appendix K, shows Upper Basin water development taking place in the future with Upper Basin depletions increasing with time. For the FEIS a revised depletion schedule, developed in 1999, was incorporated into the Colorado River computer model. While the analysis performed for the FEIS uses increasing depletion estimates for the Upper Division, the development of specific new water projects within the Upper Division and the environmental compliance and the legal issues to be resolved in such specific projects are not part of the scope of this proposed action.

2: The analysis does show that Lake Powell storage is sensitive to periods of drought under all alternatives considered in the EIS. Changes in Lake Powell storage resulting from surplus water deliveries to the Lower Basin is an important impact being analyzed in this EIS.

3: The Colorado River Basin Project Act of 1968 (CRBPA), in Section 602 (a)(3), states that water not required to be stored under Sections 602 (a)(1) and 602 (a)(2) of the CRBPA shall be released from Lake Powell under specified conditions, and one of those conditions is if it can be reasonably applied in Lower Division States to the uses specified in Article III (e) of the Compact. Article III (e) of the Compact specifies water must be applied to domestic and agricultural uses. The CRBPA further specifies that water is not to be released from Lake Powell when the active storage in Lake Powell is less than the active storage in Lake Mead. As long as the conditions set forth in the CRBPA and the LROC for Colorado River reservoirs are satisfied, we believe the release of surplus water for groundwater banking is fully in compliance with applicable law. Finally, the Lower Division states each define groundwater banking to be a beneficial use.

September 7, 2000  
Page 3

cont'd

groundwater banking is a current, beneficial use of Compact water under §602. This question is separate and distinct from how wise banking might be from an engineering standpoint. This is a highly relevant inquiry in that the delivery of artificial "surplus" waters for groundwater banking will require lowering Lake Powell to make equalizing deliveries to Lake Mead. The draft agreement should be modified to prevent lowering of Lake Powell storage levels to make deliveries to the Lower Basin for other than current, beneficial uses, and should specify that releases should not be made for groundwater banking in the Lower Basin.

4

The 15-year agreement appears to contain the potential for substantial damage to be done to Upper Basin interests absent firm requirements for limiting or de-linking equalizing releases from Lake Powell to Lake Mead. The strategy of lowering Lake Powell to make delivery of artificial surpluses to the Lower Basin is, in UPWA's view, highly risky.

Colorado and the Rest of the Upper Basin Will Only Be Protected by Development of Their High-Altitude Storage Capacity--The 15-Year Agreement Contains no Assurances of Colorado's Right to Develop Its Remaining Compact Share

5

The 15-year agreement offers significant assurance to the Lower Basin population centers that municipal and industrial water will be available for delivery during the 15-year agreement period at some substantial risk to Lower Basin agriculture. At the same time, however, the United States and environmental groups are acting to prevent new municipal appropriations in the Upper Basin principally in Colorado. We do not believe that these developments can be ignored by the DEIS or that they are unrelated.

The 15-year agreement does offer Colorado and the Upper Basin some degree of certainty with regard to water allocation in the Lower Basin. The principal assurance to the Upper Basin is establishing firm benchmarks as to when the Secretary will act to declare surplus or shortage conditions in the system. Clearly, the agreement favors the certainty of municipal supplies in the Lower Basin when viewed in light of the active construction of additional storage there and the re-allocation of Lower Basin priorities.

The situation in the Upper Basin inspires less confidence. When, at the same time as municipal supplies in the Lower Basin are being protected, the U.S. Bureau of Reclamation is acting to prevent municipal development of Upper Gunnison waters in the Colorado portion of the Upper Basin, there is little cause for the Upper Basin states to believe that they are truly protected. In essence, the silence of the Upper Basin gives Lower Basin interests a virtual green light to assure the survival of the surpluses past the 15-year point by utilizing vigorous and active efforts to prevent Upper Basin development.

Without a comprehensive commitment to act to develop Upper Basin resources, the 15-year agreement is but half a loaf. The agreement fails to take account of any need to act to develop Upper Basin water resources to meet critical needs there. The DEIS fails to evaluate the impact of

*Preventing 15 years*

4. As noted in Section 1.4.2, the equalization requirement in the LROC is the mechanism through which delivery of surplus water to the Lower Basin can influence the operation of Glen Canyon Dam resulting in changes to the storage of water in Lake Powell. Changes in Lake Powell storage resulting from surplus water deliveries to the Lower Basin is an important impact being analyzed in this EIS.

5. The DEIS recognized that future water development will be taking place in the Upper Basin. The computer model simulations of the Colorado River used in the DEIS incorporate an Upper Basin depletion schedule, developed by the Upper Colorado River Commission in 1996 in coordination with the Upper Basin states. That Upper Division depletion schedule, shows Upper Basin water development taking place in the future with Upper Basin depletions increasing with time. For the FEIS, a revised depletion schedule, developed in 1999, was being incorporated into the Colorado River computer model. While the analysis performed for the FEIS uses increasing depletion estimates for the Upper Division, the development of specific new water projects within the Upper Division and the environmental compliance and the legal issues to be resolved in such specific projects are not part of the scope of this proposed action.

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6

Upper Basin development on the needs and water availability in the Lower Basin including the extent to which development of high storage capacity in the Upper Basin might lead to less frequent surplus conditions in the Lower Basin. The situation in the Upper Basin is not neutral. The U.S. BUREC and the U.S. Fish and Wildlife Service are asserting legal positions which are making it more difficult to appropriate water under the Upper Basin States' Compact shares. This is not a theoretical concern, but one which exists today, and which can only worsen if continued for 15 more years.

The 15-Year Agreement is Not Without Risk to the Upper Basin

Though the primary risks inherent in the 15-year agreement will fall within the Lower Basin, the agreement is not without risk to the Upper Basin. It is apparent from the notice that the Metropolitan Water District of Southern California ("MWD") is a major beneficiary of the agreement. It is clear that MWD has major new assurances that it will be able to deliver a firm supplies of water for municipal and industrial ("M & I") use during the 15 year period. The risks seem to fall mainly on agricultural use in the Lower Basin, and upon storage levels in Lake Mead. It seems clear that a series of drought condition years would cause a major run-down of Lake Mead storage levels.

7

8

The likelihood of a major rundown in Lake Mead storage should be further evaluated under historic drought conditions, as well as under anticipated "average flow" conditions. To the extent that this was done in the Sensitivity Analysis of Shortage Assumptions, major decreases below storage protection targets occur at Lake Powell. In the Final EIS, a line should be included in the Lake Powell End of Year Elevations to show the collapse of storage levels below the 3630 level targeted for protection by the 15-year agreement. The results of the sensitivity analysis are startling, and are deserving of far greater attention in the DEIS.

15

Should a storage rundown occur, and should major shortages develop in the Lower Basin, the Upper Basin is theoretically protected by a required de-linking of equalizing flows from Lake Powell, behind Glen Canyon Dam, to Lake Mead under §602 (a). It is virtually certain that strong political pressure would be brought to bear to release Compact storage from Lake Powell to relieve shortage conditions at Lake Mead and in the Lower Basin generally. The 15-year agreement does not appear to contain assurances that the Secretary would not act to meet shortage conditions by releasing waters from Lake Powell, other than to mandate a minimum storage value at Lake Powell of 14.85 maf and a minimum storage target of elevation 3630.

16

9

There appears to be a danger that the flow assumptions which underlie the 15-Year Agreement are too optimistic, and that greater attention needs to be paid to the effect on storage levels of prolonged low flow or drought conditions. Indeed, modeling of other parameters indicates that the actual fluctuations may be far greater than those depicted on the end of year elevations.

Page 4 (unpaged) 9/10

6: Comment noted

7: See response to Comment 5-2 with regard to effects of interim surplus criteria on the Upper Basin. The FEIS addresses the risk of severe drawdown of Lake Mead.

8: The method used to model the future inflows into the Colorado River in the FEIS is referred to as the Index Sequential Method (ISM). This technique has been used since the early 1980s and involves a series of simulations, each applying a different future inflow scenario. Each future inflow scenario is generated from the historical natural flow record by "cycling" through that record. As the method progresses, the historical record is assumed to "wrap around," yielding a possible 85 different inflow scenarios. The result of the ISM is a set of 85 separate simulations (referred to as "traces") for each operating criterion that is analyzed. The ISM captures the range of historical inflows that include drought periods, wet periods and in-between periods. This method enables an evaluation of the respective criteria over a broad range of possible future hydrologic conditions using standard statistical techniques.

15: The Lake Powell water surface elevation of 3630 feet is not an elevation identified as a specific threshold water surface elevation. As such, this specific elevation was not analyzed. Other Lake Powell water surface elevations were analyzed that ranged from 3695 to 3612 feet. These range of elevations that were analyzed include all the elevations identified as specific threshold Lake Powell water surface elevations.

16: With interim surplus criteria in effect, the Colorado River would still be operated according to existing regulations. Please see response to Comment No. 5-2.

9: Elevations of lakes Powell and Mead may fluctuate more than 10 feet within any given year. These fluctuations are represented by end-of-December analyses for Lake Mead and end-of-July water level analyses for Lake Powell. However, the Index Sequential Method of modeling which was performed using monthly time steps (see response to Comment 61-8) and presentation of 10-percent, 50-percent and 90-percent exceedence levels (see Section 2.3.4) indicate reasonable responses of reservoir levels to a wide range of hydrologic conditions.

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The Needs of the Lower Basin for Certainty Cannot be Divorced from Identical Needs in the Upper Basin

- 10 The Lower Basin cannot be viewed in isolation from the Upper Basin. The Secretary has now taken the position that BUREC may operate CRSPA facilities to prevent Upper Basin development, at least development not politically favored by the Secretary. This position is dangerous to the position of the Upper Basin, despite any assurances that Colorado's negotiating team may have given to the other Upper Basin States. If BUREC can utilize CRSPA to prevent, rather than to aid, Upper Basin development, why should the Upper Basin believe that Lake Powell storage levels will remain inviolate, if indeed they will at all? Could a 14.85 maf storage level at Lake Mead trigger Compact delivery requirements at the other, smaller CRSPA reservoirs above Lake Powell?

Given BUREC's recent attempts to prevent Upper Basin development in Colorado, representing the majority of the Upper Basin's Compact Share, the opportunity afforded the Upper Basin to sue the Secretary to protect Lake Powell storage levels may not be a viable remedy.

Inadequate Attention is Paid to the Delivery of "Surplus" Waters For Groundwater Banking in the Lower Basin

- 11 Groundwater banking in the Lower Basin of genuine flood surplus flows is unobjectionable, and generally wise. The situation is different where the delivery of artificial surpluses, which require lowering Lake Mead storage levels, is made for groundwater banking.
- To protect the Upper Basin, it is imperative that equalizing releases from Lake Powell not be made to Lake Mead to replace water delivered for groundwater banking. The 15-year agreement, and the DEIS, fail to account for the potential impact on the Upper Basin from groundwater banking in the Lower Basin.
- The UPWA questions whether groundwater banking of other than flood surplus flows is a current, beneficial use in the Lower Basin for which deliveries of other than flood surplus flows are authorized for Compact purposes.

The Protection Offered to the Upper Basin is Illusory Given Related Actions by the United States

- 12 The UPWA thus brings a unique perspective to its comments. Though the 15-year agreement is ostensibly designed, in part, to offer assurance to the Upper Basin states, including Colorado, that its right to develop Upper Basin allocations will be protected, such protection appears to be illusory at best. The United States is already moving aggressively to prevent Upper Basin development predicated upon its control of federally owned facilities, including CRSPA facilities.

10: The statement that the "Lower Basin cannot be viewed in isolation from the Upper Basin" is a true and valid statement. In the analysis, both the Upper and Lower basins were considered. Future increased water development in the Upper Basin is incorporated into the analysis. Computer model simulations of the Colorado River used in the DEIS incorporate the 1996 Upper Basin depletion schedule, developed by the Upper Colorado River Commission in coordination with the Upper Basin States. For the FEIS, an updated depletion schedule, developed in 1999, was used. The computer modeling performed for all alternatives showed no instances where water stored in reservoirs above Lake Powell was required to be released to satisfy the requirements of the Colorado River Compact.

11: During the interim surplus criteria period, the agencies that have contracted for surplus water will use surplus water, when available, to meet direct water supply demands, as well as to provide a source of water for conjunctive use and storage programs. The delivery of water to Colorado River water users will be in accordance with the guidelines developed for the selected surplus alternative, if one is selected, and will be consistent with the Law of the River. The FEIS considered and evaluated the potential impact to the Upper Basin users resulting from the surplus alternatives. The analysis results indicated that the interim surplus criteria would have no significant effect on the Upper Basin users as a result of the interim surplus criteria.

12: Reclamation is required to take certain actions to administer United States obligations under the Endangered Species Act and we acknowledge that some actions to meet species protection mandates may affect river operations. Reclamation's required actions to protect and enhance habitat for threatened and endangered species in the United States should not be interpreted as opposition to Upper Basin development. The United States does not assume an obligation to mitigate for adverse impacts in Mexico, but supports joint cooperation projects that would benefit both the United States and Mexico. We acknowledge that in the long run, Upper Basin development will reduce the amount of surplus water available for delivery in the Lower Basin.



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Recent activities and litigation in the Lower Basin and in the Rio Grande raise concurrent concerns about future use of the Endangered Species Act to bypass statutory and Compact requirements in the name of species protection. The United States and numerous environmental groups are moving aggressively to utilize the Endangered Species Act to prevent additional water development in the Upper Basin and elsewhere, and to concurrently re-orient the use of federal water facilities and water operations to protect endangered species. The DEIS fails to analyze the likely impact of these activities and litigation upon the future operation of facilities in the Upper Basin and the Lower Basin. For example, in the Rio Grande drainage, the United States is asserting that its ownership of facilities allows it to mandate releases and bypasses to meet species protection goals under the ESA. A recent lawsuit by environmental groups in the United States and Mexico to protect endangered species in both countries has raised an issue regarding the ability of the Secretary to honor statutory or Compact commitments in the long term when faced with legal challenges to current patterns of operation. These activities do not occur in a vacuum when considering the fate of Upper Basin development, and raise immediate concerns about federal opposition to further Upper Basin development. The 15-year agreement contains no federal commitments protecting the Upper Basin.

The operational effects of Federal environmental initiatives, including the ESA, upon CRSPA facilities critical to meeting Lower Basin needs during the 15-year agreement must be evaluated. The U.S. is currently involved in litigation as both a plaintiff and a defendant, and the outcome of current ESA litigation on the 15-year agreement, and the Upper Basin needs to be evaluated. Once again, these concerns are not theoretical or in the future, but real and present now. In Colorado, significant releases from Blue Mesa Reservoir are already contractually dedicated to endangered species protection. What is the cumulative impact of all these policies and actions on the Upper Basin and its human populations? The DEIS offers no such analysis.

- 13 The DEIS further notes that lowering Lake Mead storage levels may create additional habitat for endangered species at several locations. There is no discussion of the arguments that could be made for such a situation becoming either permanent or the object of additional protection. What effect would the creation of additional habitat at Lake Mead have upon equalizing flows from Lake Powell?

The 15-year Agreement and the DEIS ignore the Need to Develop the Upper Basin as the Necessary Complement to Fair Implementation

- 14 The 15-year agreement has the effect of looking at major developments in the Lower Basin in isolation. Though the 15-year agreement may help to support the Upper Basin's already strong legal claim to develop its remaining Compact share, the practical effect is far more limited. The reasons for those limitations are discussed above.

The Upper Basin has no reason to be sanguine about its future prospects without concurrent action to develop its own rights. The United States and environmental groups are actively working now to put in place legal requirements to make significant Upper Basin development difficult or impossible. Thus, re-orientation of Lower Basin allocations should not be considered in isolation.

WY 1999-2000

13. Additional riparian habitat could develop at various locations around Lake Mead when lower surface elevations occur. As discussed in Section 3.8, lower elevations could occur under baseline conditions and each of the alternatives depending primarily upon future hydrologic conditions and Lake Mead water releases. The EIS recognizes that fluctuating reservoir elevations would continue under baseline conditions and the alternatives, which would likely result in future periods of both inundation and exposure of these areas. The proposed action would not change 602(a) equalization requirements.

14. Reclamation and other federal agencies have complex missions and sometimes conflicts arise on issues. For example, Reclamation's legal responsibility to administer the Endangered Species Act affects river operations and the timing of water deliveries. Reclamation does not oppose Upper Basin development but must fulfill its legal obligations under ESA, NEPA and other applicable federal legislation. We acknowledge that the construction and operation of water development projects has become more complicated with additional laws and environmental considerations, but such considerations cannot be ignored.

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from the crying need for Upper Basin development to avoid major shortages. These areas of shortage will include the Colorado Front Range communities which are not protected by the agreement.

Put simply, the protection of municipal uses in the Lower Basin while municipal uses are actively prevented in the Upper Basin raises numerous issues which have not been answered by the DEIS. Such actions in the Upper Basin are directly related to the likely permanence of the use of Colorado generated surpluses in the Lower Basin, and in California particularly.

Conclusion

Though the 15-year agreement has some merit, it, like the Colorado River Compact itself, cannot be considered in isolation. The only real protection which the Upper Basin has will come with the development of its own potential, including the ability of Colorado to protect its own citizens from the effects of diminished supply and drought. In the meantime, the DEIS fails to account for federal aggressiveness in attempting to foreclose the very development which, in theory, the 15-year agreement attempts to protect. This is a matter critical to Colorado's water future, including the large urban populations of the Colorado Front Range. This human environment is plainly a major part of the NEPA equation, and must be addressed.

The DEIS fails to consider the threat to Lake Powell storage levels under drought conditions. The DEIS fails to consider the threat to Lake Powell storage levels from groundwater banking in the Lower Basin of other than flood surplus flows. The 15-year agreement and the DEIS fail to deal with the use of Lake Powell to equalize the delivery of artificial surpluses to the Lower Basin, and to the MWD in particular. Any threat to Lake Powell storage is a threat to the long term future of the Upper Basin. This is an issue of the first importance, but is not addressed.

Thank you for the opportunity to comment. Once again, we would like to renew our request for additional time to develop comments on the DEIS.

Sincerely,

VRANESIC AND RAISCH, LLP

  
John R. Henderson

JRH:kes

cc: Union Park Water Authority

Very truly yours,

## COMMENT LETTER

UPPER COLORADO  
RIVER COMMISSION

355 South 400 East • Salt Lake City • Utah 84111 • 801-531-1150 • FAX 801-531-9705

September 8, 2000

SEP 11 2000

BY FAX AND U S MAIL

Regional Director  
Lower Colorado Region  
U S Bureau of Reclamation  
P O Box 61470  
Boulder City Nevada 89006-1470

Attention: Ms. Jayne Hawkins - BC00-4600

Dear Ms. Hawkins:

On behalf of the Upper Division States, thank you for the opportunity to provide comments on the Draft Environmental Impact Statement (DEIS) and supplemental information on the "Colorado River Interim Surplus Criteria."

The Upper Colorado River Commission is an interstate administrative agency created by the Upper Colorado River Compact of 1948. The member States of the Upper Colorado River Commission are: Colorado, New Mexico, Utah and Wyoming. Since its inception, the Commission has actively participated in the development, utilization and conservation of water resources of the Colorado River Basin.

The Upper Colorado River Commission has been concerned for a long time about the Lower Colorado River Basin's demand for water in excess of its Compact apportionment. This has been especially true in California.

As early as 1990, discussions between California and the other Basin States were initiated in an attempt to encourage California to manage its demand for Colorado River water to remain within its basic Colorado River apportionment. Beginning in 1996, Lower Basin demands above 7.5 million acre-feet (maf) per year have been met because of favorable hydrologic conditions and through the use of a surplus determination as contemplated in Article II(B)(2) of *Arizona v. California*. Favorable hydrologic conditions may not, however, provide adequate water supplies to meet similar future Lower Basin demands.

California has recently completed the negotiation of a water management plan that could facilitate water conservation and transfer sufficient to allow California's needs to be met within its basic apportionment of 4.4 maf by 2016. Certain of the interim surplus criteria alternatives analyzed within your Draft Environmental Impact Statement could provide short-term certainty to domestic users in California and the other Lower Basin States while providing sufficient time for California to implement its necessary water savings and transfer activities.

Ms. Jayne Harkins  
September 8, 2000  
Page 2

The supplemental seven Basin States information provided by *Federal Register* notice dated August 8, 2000 is a carefully crafted set of interim guidelines that represent a consensus agreement among the seven States to govern the determination of surplus conditions in the Lower Colorado River for the next 15 years. These guidelines have been specifically developed to turn up domestic supplies in the Lower Basin while providing appropriate protection for all water users in the Colorado River Basin during the interim period. Further, the proposed guidelines are predicated on and contain enforceable measures to insure that California implements the necessary measures to manage its future demand on Colorado River mainstream water to 4.4 maf/year.

These seven Basin States proposed guidelines fit within the range of the alternatives evaluated in the present DEIS. It is our full expectation that they will be adopted by the Secretary of the Interior as the preferred alternative in the Final Environmental Impact Statement (FEIS) and Record of Decision.

For further consideration in your development of the Final Environmental Impact Statement, we provide the following comments of specific concern:

(1) The Upper Colorado River Commission, in its review of the DEIS, finds that there are a number of views expressed in the DEIS concerning the "Law of the River" with which it disagrees or does not wholly concur. However, these differences do not significantly impact the results of the DEIS and thus the Commission does not see any merit in debating them in the DEIS process. However, the Commission wants it clearly understood by all parties that it is not, in any way, changing long-standing positions on Colorado River issues as a result of the way they may be stated in the DEIS. Rather, we would strongly encourage the Bureau of Reclamation to include the usual disclaimer it uses to address the differences that exist with respect to the "Law of the River."

(2) In December 1999, the Upper Colorado River Commission approved and made available revised Upper Basin depletions for use in long range model studies. These revised depletions were provided to Reclamation in January 2000. These revised demands were used when the seven Basin States utilized CRSEZ in analyzing the impacts of and arriving at the seven Basin States' interim surplus guidelines discussed above. Model studies for the Draft Environmental Impact Statement utilizing Riverware did not use these revised Upper Basin States depletion estimates. We request that the revised Upper Basin depletions be incorporated in any future modeling efforts to support your Final Environmental Impact Statement (FEIS).

(3) The no action/baseline strategy, described as a 70R strategy, is not a strategy based on an accurate depiction of past actions. Surplus determinations have been made since 1996. The determination for 1996 was made retroactive, based on a 70R strategy and when demands were projected to exceed 7.5 maf. During the development of the 1997 Annual Operating Plan (April through June), hydrologic and forecast criteria substantiated a 70R strategy surplus determination. Only after completion of the "Field Draft" did water supply conditions change, jeopardizing a surplus determination justified by a 70R strategy. A conscious decision was made by Basin States representatives and Interior to stick by a surplus strategy supported by

1: The preferred alternative in this FEIS is derived from the Seven States Proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need of the proposed action. Reclamation policy and operational procedures

2: Comment noted

3: Revised depletion schedules provided by the Basin States were used in analyses for the FEIS. See response to Comment No. 14-10 for more detail.

4: The 70R strategy has been used for the baseline in this FEIS. For additional information, see response to Comment 57-11.

4 cont'd  
below

## COMMENT LETTER

Ms. Jayne Harkins  
September 8, 2000  
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a 70R strategy surplus based on conditions prevalent during the time frame of Interior/Basin States negotiations. Surplus determinations since 1997 have all been made under flood control or 70R trace conditions. To suggest that a 75R strategy represents the no action (historical process) is not historically correct.

5

(4) The Draft Environmental Impact Statement characterizes the six Basin States plan as based on 75R trace hydrology. This is categorically incorrect. The six Basin States' guidelines (December 1998) as well as the present seven Basin States interim guidelines all have as a baseline condition a return to 70R trace criteria following the interim period.

6

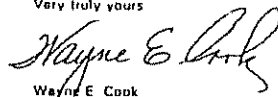
(5) Your comparisons of alternative studies are not consistent in their assumptions. The Base Case and Flood Control alternatives were evaluated not including the water conservation and transfer contemplated in the California 4.4 plan. However, when similar studies were made for the six Basin States and California plan, those conservation and transfer measures were included, rendering the comparative results somewhat in error. All final comparative alternative studies must have similar assumptions, and we recommend that the provisions of the California 4.4 plan be a part of each analysis.

7

(6) All of the present alternative studies in the Draft Environmental Statement have been made without consideration of periodic inflows into the Colorado River from the Gila River above Yuma, Arizona. These periodic flows provide a significant impact on releases from Lake Mead for deliveries to Mexico and as such influence system demands and storage in both the Lower Basin and the Upper Basin. We believe these Gila River flows need to be included, and we encourage Reclamation to do so.

The timely adoption of interim surplus criteria is of the utmost importance in being able to provide dependable domestic water supplies in the Lower Basin in the near term. We encourage you to complete the Final Environmental Impact Statement (FEIS) and Record of Decision prior to January 1, 2001.

Very truly yours,



Wayne E. Cook  
Executive Director

5: The operational modeling for the Six States Alternative uses the 70R strategy after the 15-year interim period in this FEIS.

6: Please see response to Comment 37-11.

7: All studies have been made without consideration of periodic inflows into the Colorado River from the Gila River above Yuma, AZ. Gila River flows are infrequent and unpredictable. The RiverWare CRSS model is not currently set up to model Gila River flows; there was insufficient time to incorporate them into the model. The US Army Corps of Engineers has recently completed flow studies of the Gila River. Reclamation is reviewing this new data and will consider modeling the Gila River in future studies.

## LOCAL AGENCIES

<u>Letter #</u>	<u>Agency Name</u>	<u>Page #</u>
33	City of Phoenix, Office of the City Manager .....	B-119
34	Grand County Council (Utah) .....	B-122

## COMMENT LETTER



City of Phoenix

September 8, 2000

Mr. Robert Johnson  
Regional Director  
Lower Colorado Regional Office  
c/o Jayne Harkins  
BC00-4600  
Bureau of Reclamation  
P.O. Box 61470  
Boulder City, Nevada 89006-1470

Phoenix  
1422

Re: Colorado River Interim Surplus Criteria Draft  
Environmental Impact Statement

Dear Mr. Johnson:

On behalf of the City of Phoenix ("City of Phoenix") I hereby offer comments to the Bureau of Reclamation's ("Reclamation") Colorado River Interim Surplus Criteria Draft Environmental Impact Statement ("DEIS")

Colorado River Basin States Proposal

As outlined in the Federal Register Vol. 65, No. 153, dated August 8, 2000 the states of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming have agreed to Interim Surplus Criteria ("Seven Basin States Plan") and have consulted with the Secretary of the Interior ("Secretary") as contemplated by the statutory framework for the operation of Colorado River Reservoirs

Phoenix supports Reclamation's preliminary determination that the Seven Basin States Plan is within the range of alternatives and impacts analyzed in the DEIS (65 Fed. Reg. 48531, August 8, 2000). Phoenix requests that the FEIS recognize that the Seven Basin States proposal has been adequately analyzed. Phoenix supports the adoption of this alternative as the preferred alternative for the proposed action.

Baseline Condition

Phoenix believes that the 70R spill avoidance strategy more accurately reflects historical practices by the Secretary in managing the Colorado River Reservoir System. The 70R strategy should therefore be adopted as the baseline condition.

1: The preferred alternative in this FEIS is derived from the Seven States Proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need of the proposed action. Reclamation policy and operational procedures

2: The 70R strategy is used for the baseline in this FEIS. For additional information, see response to Comment 57-11

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below

Mr. Robert Johnson  
Regional Director  
Lower Colorado Regional Office  
September 8, 2000  
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The 70R strategy has been adequately analyzed in the DEIS because "modeling results from 70R strategy are very similar to the Flood Control Alternative, which is evaluated in the DEIS (described in Section 2.3.2) DEIS at 2-1. Adoption of the 70R strategy as the baseline in the FEIS will not require any major reworking of the data found in the DEIS

California Colorado River Water Use Plan (4.4 Plan)

3

The DEIS states that the Secretary "may condition the continuation of interim surplus criteria for the entire period through 2015 on a showing of satisfactory progress in implementing the 4.4 Plan" DEIS at 1-22

Phoenix urges the Secretary to explicitly recognize that the continued effectiveness of the Interim Surplus Criteria proposed in the Seven Basin States Plan is to be conditioned on continued progress by California towards implementation of its 4.4 Plan

Transboundary Impacts

4

Section 3.16 of the DEIS contains a lengthy discussion of the "potential effects that extend across the international border below the NIB" DEIS at 3.16-1

Phoenix does not believe that Reclamation's analysis of these potential impacts is warranted. Reclamation recognizes the tenuous nature of its analysis since the DEIS states that "the potential effects on Mexico's resources cannot be specifically determined due to the uncertainty of water use once it flows across the NIB into Mexico. The waters of the Colorado River, once delivered to Mexico, as agreed upon in the Mexican Water Treaty of 1944, are the exclusive property of Mexico. The treaty contains no provisions requiring Mexico to provide water for environmental protection, nor any requirements relating to Mexico's use of that water" DEIS at 3.16-1

3: The selection of the Basin States Alternative as the preferred alternative incorporates the implementation of California's Colorado River Water Use Plan conservation progress. Proposed guidelines for this alternative are in Attachment I

4: Comment noted. (See response to Comment 22-4.) In addition, CEQ guidance recognizes that there are concerns about the availability of information and agencies have a responsibility to undertake a reasonable search for relevant, current information



Mr. Robert Johnson  
Regional Director  
Lower Colorado Regional Office  
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Water Rights Settlements

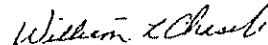
5: Comment noted

5

The DEIS states that "under shortage, potential impacts to Indian CAP water users differ depending upon whether CAP water is allocated under settlement or without settlement." DEIS at 3 14-13. The same holds true for municipal, industrial and non-Indian agricultural CAP water users in Arizona.

Potential allocations to CAP water users and Indian tribes are the focus of interrelated settlements involving CAP operation and repayment and Indian water rights. Phoenix has previously commented regarding the impacts to CAP allocations with or without settlement. These comments to the Draft Environmental Impact Statement, Central Arizona Project, Allocation of Water Supply and Long-Term Contract Execution are hereby incorporated by reference. They are attached hereto as Attachment A.

Sincerely,



WILLIAM L. CHASE, JR.  
Water Advisor

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Enc

## COMMENT LETTER

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GRAND CO CLERK

PAGE 02

## Memo



Date: September 8, 2000

To: Ms. Jayne Harkins  
Attention: BC00-4600

From: Grand County Council

Subject: Colorado River Interim Surplus Criteria

This letter is in support of the "Seven State Proposal" for Interim Surplus Guidelines on the Colorado River.

We feel this proposal will allow us to receive our allotted share of the Colorado River water while easing the burden on those states that are currently using in excess of their allotted share.

Thank you

1. The preferred alternative in this EIS is derived from the Seven States Proposal. Reclamation did not structure the preferred alternative precisely as described in that draft proposal, but made some changes for consistency with the purpose and need of the proposed action. Reclamation policy and operational procedures